RULES OF PRACTICE

OF THE

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF ARIZONA

DECEMBER 1, 2003

(As of 12-01-03)

Rule 1 - RULES OF GENERAL APPLICATION

Rule 2 - RULES WITH PARTICULAR APPLICATION TO CIVIL PROCEEDINGS

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App.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.1

LOCATIONS

The District covers the entire State of Arizona. However, for convenience the District is divided into three unofficial divisions, each named and comprising counties as follows:

Phoenix Division: Maricopa, Pinal, Yuma, La Paz, and Gila counties.

Prescott Division: Apache, Navajo, Coconino, Mohave, and Yavapai counties.

Tucson Division: Pima, Cochise, Santa Cruz, Graham, and Greenlee counties.

(a) **Clerk's Offices; Place of Filing**. Permanent office of the Clerk shall be maintained at Phoenix and at Tucson and shall be open from the hours of 8:30 a.m. to 5:00 p.m. on each day except Saturdays, Sundays, and legal holidays enumerated in Fed.R.Civ.P. 77(c), when the offices are closed unless otherwise ordered by the Court. All files and records of the Phoenix and Prescott divisions shall be kept at Phoenix, and all files and records of the Tucson division shall be kept at Tucson. Unless otherwise ordered by the court, all filings for the Phoenix and Prescott divisions shall be made in Phoenix, and all filings for the Tucson division shall be made in Tucson. In cases where the cause of action has arisen in more than one county, the plaintiff may elect any of the divisions appropriate to those counties for filing and trial purposes, although the Court reserves the right to assign any cases for trial elsewhere in the District at its discretion.

(b) **Schedule of Hearings**. The Court shall be open permanently at Phoenix and at Tucson and will sit at Prescott and such other places when and as the Court shall designate.

(c) **Place of Trial**. Unless otherwise ordered by the court, all civil and criminal cases founded on causes of action (1) arising in the Phoenix Division shall be tried in

Phoenix, (2) arising in the Prescott Division shall be tried in Prescott, and (3) arising in the Tucson division shall be tried in Tucson. All civil and criminal cases founded on causes of action arising on the Tohono O'Odham Indian Reservation shall be tried in Tucson, unless otherwise ordered by the Court. All civil and criminal cases founded on causes of action arising on the San Carlos Indian Reservation shall be tried in Phoenix, unless otherwise ordered by the Court.

(d) **Writs of Habeas Corpus.** Petitions for writs of habeas corpus by a person in State custody under 28 U.S.C. §2254, notwithstanding the requirements of paragraph (c) above, shall be filed in the division which includes the County in which the judgment of conviction was entered, and not necessarily in the division where presently held in custody.

(e) **Defendants in Criminal Proceedings.** All Magistrate Judges, when holding persons or corporations charged with a crime and ordered to appear before this Court, shall require such persons or corporations to give bond or recognizance for their appearance in the division of the Court in which the case arose, in accordance with the orders and directions of the Court, or commit them to the custody of the United States Marshal. The Marshal shall confine the prisoners in such jail available for detention of federal prisoners as is situated most conveniently to the division in which the case arose.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.2

FILING OF DISCOVERY AND DISCLOSURE NOTICES; ASSIGNMENT OF CASES; RELATED CASES AND CONSOLIDATION; CIVIL RICO CASES

(a) **Filing of Discovery and Disclosure Notices.** A "Notice of Service" of the disclosures and discovery requests and responses listed in Rule 5(d) of the Federal Rules of Civil Procedure must be filed within a reasonable time after service of such papers.

(b) **Refiling.** Cases refiled after dismissal may, upon motion of any party, be reassigned to the District Judge to whom the case was previously assigned. Motions for reassignment shall be heard by the Chief Judge or designee.

(c) **Assignment of Criminal Cases.** Within each division, the criminal cases, when filed, shall be assigned equally among the District Judges of the division by the Clerk (or by a deputy designated by the Clerk) by automated random selection and in a manner so that neither the Clerk nor any parties or their attorneys shall be able to make a deliberate choice of a particular Judge for a particular case. The cases so assigned shall remain with the Judge to whom assigned unless otherwise ordered by the Court. With the exception of defense counsel, any officer of the court who determines that a new charge has been filed against a defendant who is under federal court supervision shall immediately notify the presiding judge before whom the new case is pending. Where a defendant is charged with a new crime and is currently on supervised release, the new case which is pending or subsequently filed shall be assigned to the District Judge presiding over the revocation proceeding. However, if the Judge assigned the revocation proceeding is a Senior District Judge, unless otherwise ordered by that Judge, both matters shall be assigned to a District Judge drawn by automated random selection.

(d) **Assignment of Juvenile Matters.** Within each division, the juvenile matters, when filed, shall be assigned equally among the District Judges of the division by the Clerk (or by a deputy designated by the Clerk) by automated random selection and in a manner so that neither the Clerk nor any parties or their attorneys shall be able to make a deliberate choice of a particular Judge for a particular case. The cases so assigned shall remain with the Judge to whom assigned unless otherwise ordered by the Court. When an information is filed against a juvenile in the District Court, a District Court Judge shall be assigned to hear the matter. If the government moves to transfer the juvenile to adult status and the motion to transfer is granted, the case shall be assigned by automated random selection to a District Judge upon return of an indictment by the grand jury.

(e) **Assignment of Civil Cases.** Within each division, the civil cases, when filed, shall be assigned equally among the District Judges of the division by the Clerk (or by a deputy designated by the Clerk) by automated random selection and in a manner so that neither the Clerk nor any parties or their attorneys shall be able to make a deliberate choice of a particular Judge for a particular case. The cases so assigned shall remain with the Judge to whom assigned unless otherwise ordered by the Court. Unless otherwise ordered by the Court, the Clerk shall assign each civil case to a District Judge or a Magistrate Judge by automated random selection, except that when preliminary injunctive relief is requested by motion, the Clerk shall assign the case to a District Judge. In the event the action is assigned to a Magistrate Judge, each party shall execute and file within 20 days of its appearance either a written consent to the exercise of authority by the Magistrate Judge under 28 U.S.C. § 636(c), or a written election to have the action reassigned to a District Judge. Each party shall indicate his or her

consent or election on the form provided by the Court. Prior to the completed consent or election forms being received by the Clerk of the Court, the assigned Magistrate Judge shall act pursuant to 28 U.S.C. § 636(b)(1)(A). Any motion submitted by a party before that party has filed an election form may be stricken or deferred by the Court. In the event one or more parties elect to have a case heard by a District Judge, the case shall be reassigned to a District Judge. After one or more consents to a Magistrate Judge have been filed with the Clerk and until such time as an election is made by any party for assignment to a District Judge, the Magistrate Judge shall continue to act pursuant to 28 U.S.C. § 636(c)(1) even though all parties have not been served or have not filed their appearances. Consent to a Magistrate Judge's authority does not constitute a waiver of any jurisdictional defense unrelated to the grant of authority under 28 U.S.C. § 636(c).

(f) **Temporary Reassignment of Cases.** A case assigned to a particular District Judge may be temporarily reassigned to another District Judge, if the District Judge to whom the case is assigned is unavailable and an exigency exists which requires prompt action by the Court. The case will be reassigned by the Clerk (or by a deputy designated by the Clerk) to a District Judge by automated random selection among the District Judges then assigned to service in the District of Arizona, for the limited purpose of hearing or determining the matter that is the subject of the exigency.

(g) (1) **Related Cases.** Whenever two or more cases are pending before different District Judges and any party believes that such cases (A) arise from substantially the same transaction or event; (B) involve substantially the same parties or property; (C) involve the same patent, trademark, or copyright; (D) call for determination of substantially the same questions of law; or (E) for any other reason would

entail substantial duplication of labor if heard by different District Judges, any party may file a motion to transfer the case or cases involved to a single District Judge. The motion shall be filed in each affected case, but shall contain the caption of the case with the lowest number and shall be heard by the District Judge to whom that case is assigned.

(2) **Consolidation.** A motion to consolidate pursuant to Rule 42(a), Federal Rules of Civil Procedure, shall contain the captions of all the cases sought to be consolidated, be filed in each case and be heard by the District Judge assigned the lowest case number.

(3) **Service.** Service of any motion to transfer filed under subparagraph (g)(1) or service of any motion to consolidate filed under subparagraph (g)(2) shall be made upon all parties and assigned District Judges in such cases.

(4) **Assignment.** In determining the District Judge to whom the case or cases will be assigned pursuant to subparagraphs (g)(1) or (g)(2) above, the following factors may be considered: (A) whether substantive matters have been considered in a case; (B) which District Judge has the most familiarity with the issues involved in the cases; (C) whether a case is reasonably viewed as the lead or principal case; or (D) any other factor serving the interest of judicial economy.

(h) **Docketing Format.** Each document which is separately filed by the Clerk in a particular case shall be sequentially numbered by the Clerk on the first page of the document and shall be docketed by that number.

(i) **All Civil RICO Actions.** The following rule shall apply to all claims filed in this District under the Racketeer Influenced & Corrupt Organizations Act ("Rico"), 18 U.S.C. § 1961, et seq.

Each party asserting a claim, cross-claim or counterclaims under RICO shall file a "Rico Case Statement" as

described below. This statement shall be filed within 20 days of the filing of the claim, cross-claim, or counterclaim in the particular action, and shall include those facts upon which the plaintiff is relying and which were obtained as a result of the "reasonable inquiry" required by Fed.R.Civ.P. 11. In particular, this statement shall be in a form which uses the numbers and letters as set forth below, and shall state in detail and with specificity the following information.

1. State whether the alleged unlawful conduct is in violation of 18 U.S.C. § 1962(a), (b), (c), and/or (d).

2. List each defendant and state the alleged misconduct and basis of liability of each defendant.

3. List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.

4. List the alleged victims and state how each victim was allegedly injured.

5. Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. A description of the pattern of racketeering shall include the following information:

a. List the alleged predicate acts and the specific statutes which were allegedly violated;

b. Provide the dates of predicate acts, the participants in the predicate acts, and a description of the facts surrounding the predicate acts;

c. If the RICO claim is based in the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities, the "circumstances constituting fraud or mistake shall be stated with particularity." Fed.R.Civ.P. 9(b). Identify the time, place and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made;

d. State whether there has been a criminal conviction for violation of each predicate act;

e. State whether civil litigation has resulted in a judgment in regard to each predicate act;

f. Describe how the predicate acts form a "pattern of racketeering activity"; and

g. State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.

6. Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall include the following information:

a. State the names of the individuals, partnerships, corporations, associations, or other legal entities, which allegedly constitute the enterprise;

b. Describe the structure, purpose, function and course of conduct of the enterprise;

c. State whether any defendants are employees, officers or directors of the alleged enterprise;

d. State whether any defendants are associated with the alleged enterprise;

e. State whether the claimant is alleging that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself, or members of the enterprise; and

f. If any defendants are alleged to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.

7. State and describe in detail whether the claimant is alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

8. Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering

activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.

9. Describe what benefits, if any, the alleged enterprise receives from the alleged pattern of racketeering.

10. Describe the effect of the activities of the enterprise on interstate or foreign commerce.

11. If the complaint alleges a violation of 18 U.S.C. §1962(a), provide the following information:

a. State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and

b. Describe the use or investment of such income.

12. If the complaint alleges a violation of 18 U.S.C. §1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.

13. If the complaint alleges a violation of 18 U.S.C. §1962(c), provide the following information:

a. State who is employed by or associated with the enterprise; and

b. State whether the same entity is both the liable "person" and the "enterprise' under § 1962(c).

14. If the complaint alleges a violation of 18 U.S.C. §1962(d), describe in detail the alleged conspiracy.

15. Describe the alleged injury to business or property.

16. Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

17. List the damages sustained for which each defendant is allegedly liable.

18. List all other federal causes of action, if any, and provide the relevant statute numbers.

19. List all supplemental state claims, if any.

20. Provide any additional information that you feel would be helpful to the Court in processing your RICO claim.

RULE 1 - RULES OF GENERAL APPLICATION

This subpart of the local rule 1.2(i) shall be deemed an order of the Court and subjects the parties to the provisions of Rule 37, Fed.R.Civ.P.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.3

CUSTODY AND DISPOSITION OF EXHIBITS AND SEALED DOCUMENTS

(a) **Retained by Party or Attorney.** All exhibits offered by any party in civil or criminal proceedings, whether or not received as evidence, shall be retained after trial by the party or attorney offering the exhibits, unless otherwise ordered by the Court.

(b) **Transmitted on Appeal.** In the event an appeal is prosecuted by any party, each party to the appeal shall promptly file with the Clerk any exhibits to be transmitted to the appellate court as part of the record on appeal. Those exhibits not transmitted as part of the record on appeal shall be retained by the parties who shall make them available for use by the appellate court upon request.

(c) **Notice to Remove Exhibits.** If any party, having received notice from the Clerk concerning the removal of exhibits, fails to do so within thirty (30) days from the date of such notice, the Clerk may destroy or otherwise dispose of those exhibits.

(d) **Sealed Documents - Generally**. Unless otherwise ordered by the Court, any sealed document, paper, case file or thing in any action where final judgment or final disposition occurred in 1990 or thereafter, will be subject to the custody and disposition processes according to (e) or (f), below, as applicable.

(e) **Sealed Documents - Actions in Which No Trial Commenced**. Unless otherwise ordered by the Court, any document, paper, case file or thing filed under seal in any action for which no trial commenced shall be eligible for destruction no less than 23 years from the date of entry of final judgment or final disposition. The seal will be vacated without further action by the Court at the time of destruction.

(f) **Sealed documents - Actions in Which the Case Was Terminated During or After Trial.** Unless otherwise ordered by the Court, any document, paper, case file or thing filed under seal in any action for which a trial commenced shall be unsealed without further action by the Court 23 years from the date of entry of final judgment or final disposition, and will remain stored as a permanent record. This rule further applies to all cases consolidated pursuant to Rule 65(a), Federal Rules of Civil Procedure.

The following types of cases will be exempt from this practice:

- Sexual abuse cases filed pursuant to 18 U.S.C. § 3509.
- Juvenile cases, unless the record has been expunged.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.4

CONDUCT IN COURTROOM AND ENVIRONS

(a) **Recording Devices.** All forms, means, and manner of taking photographs, tape recordings, broadcasting, or television are prohibited in all courtrooms and environs thereto during the course of, or in connection with, any judicial proceedings whether the Court is actually in session or not.

(b) **Environs Defined.** Environs as used in this Rule means the Sandra Day O'Connor United States Courthouse in Phoenix including the entire building, parking lot and curtilage up to the edge of, but not including, the sidewalk; the Evo A. Deconcini United States Courthouse in Tucson including the entire building, parking lot and curtilage; the second floor, basement and that portion of the third floor occupied by the U.S. District Court in the United States Courthouse in Prescott; the entire first floor and that portion of the second floor occupied by the U.S. District Court and U.S. Pretrial Services in the AWD Professional Building, Flagstaff; the entire United States Courthouse in Yuma. In addition to the foregoing, environs as used in this Rule also means any other building, parking lot, and curtilage up to the edge of, but not including the sidewalk, of any United States Courthouse which is placed in use after the adoption of this Rule.

(c) **Interiors of Offices.** The prohibitions of this Rule are not intended to apply to the interiors of offices having no relationship with the courts or judicial proceedings.

(d) **Exemption for Court Reporting.** This Rule is not intended to prohibit recordings by a court reporter where such recordings are for use as a court record only.

(e) **Exceptions.** A District Judge or Magistrate Judge may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, and (2) the broadcasting, televising, recording or photographing of investitive, ceremonial, or naturalization proceedings.

(f) **Computers; Cellular Phones; Other Equipment.** With the prior permission of the Court, counsel may bring into Court an unobtrusive hand-held dictating machine for use in dictating notes or reminders during trial. It is not to be used to record any part of the proceedings. Lap-top computers may be used in the courtroom providing they emit no sound, and are not disruptive to the proceedings. Cellular phones are prohibited from use in the courtroom. Any device which emits sound disruptive to the proceedings must be turned off or set on silent mode.

(g) **United States Marshal Service and General Services Administration Duties.** The United States Marshal Service (USMS) and the General Services Administration (GSA) will make reasonable efforts to promote safe and unobstructed public access to the courthouse during regular business hours. Whenever USMS or GSA in its discretion deems it necessary, or when they are ordered to do so by a Judge, USMS and GSA shall create and maintain by the placement of stanchions an ingress/egress corridor extending from the front door of the courthouse to the sidewalk. The corridor shall include the wheelchair access ramp. The corridor shall be deemed an extension of the doorway and remain unobstructed. Notwithstanding the provisions of Paragraph (a), USMS or GSA may designate a "media access area" on outdoor courthouse property in which the use of cameras and other audio and video recording equipment is permitted.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.5

ATTORNEYS

(a) **Admission to the Bar of this Court.** Admission to and continuing membership in the bar of this Court is limited to attorneys who are active members in good standing of the State Bar of Arizona.

Attorneys may be admitted to practice in this District upon application and motion made in their behalf by a member of the bar of this Court.

Every applicant shall first file with the Clerk a statement on a form provided by the Clerk setting out the applicant's place of birth, residence, office address, the courts in which the applicant has been admitted to practice, the respective dates of admissions to those courts, whether the applicant is active and in good standing in each, and whether the applicant has been or is being subjected to any disciplinary proceedings.

Motions for admission will be entertained upon the convening of the Court at the call of the law and motion calendar. The applicant must be personally present at the time and, if the motion is granted, shall be admitted upon being administered the following oath by the Clerk or a District Judge:

> "I solemnly swear (or affirm) that I will support the Constitution of the United States; that I will bear true faith and allegiance to the Government of the United States; that I will maintain the respect due to the courts of justice and judicial officers; and that I will demean myself as an attorney, counselor, and solicitor of this Court uprightly."

Thereafter, before a certificate of admission issues, the applicant shall pay an admission fee of eighty dollars ($80) to the Clerk, U.S. District Court.

(b) **Practice in this Court.** Except as herein otherwise provided, only members of the bar of this Court shall practice in this District.

(1) U.S. Government Attorneys. Any attorney representing the United States Government in an official capacity, or who is employed by the office of the Federal Public Defender in an official capacity, and is admitted to practice in another U.S. District Court may practice in this District in any matter in which the attorney is employed or retained by the United States during such period of federal service. Attorneys so permitted to practice in this Court are subject to the jurisdiction of this Court to the same extent as members of the bar of this Court.

(2) Tribal Attorneys. Any attorney representing a tribal government entity in a full time official capacity may practice in this District in any matter in which the attorney is employed or retained by the tribal government entity during such period of tribal service provided the attorney is a member of a state bar. The attorney may apply to this district court under paragraph 3, pro hac vice. Attorneys so permitted to practice in this Court are subject to the jurisdiction of this Court to the same extent as members of the bar of this Court.

(3) Pro Hac Vice. An attorney who is admitted to practice in another U.S. District Court, and who has been retained to appear in this Court may, upon written application and in the discretion of the Court, be permitted to appear and participate in a particular case. Unless authorized by the Constitution of the United States or an Act of Congress, an attorney is not eligible to practice pursuant to this subparagraph (b)(3) if any one or more of the following apply: (i) the attorney resides in Arizona, (ii) the attorney is regularly employed in Arizona, or (iii) the attorney is regularly engaged in the practice of law in Arizona. The pro

hac vice application shall be presented to the Clerk and shall state under penalty of perjury (i) the attorney's residence and office address, (ii) by what courts the attorney has been admitted to practice and the dates of admissions, (iii) that the attorney is in good standing and eligible to practice in those courts, (iv) that the attorney is not currently suspended, disbarred or subject to disciplinary proceedings in any court, and (v) if the attorney has concurrently or within the year preceding the current application made any other pro hac vice applications to this Court, the title and number of each action in which such application was made, the date of each application, and whether each application was granted. The pro hac vice application shall also be accompanied by payment of a pro hac vice fee of twenty-five dollars ($25.00) to the Clerk, U.S. District Court. If the pro hac vice application is denied, the Court may refund any or all of the fee paid by the attorney. If the application is granted, the attorney is subject to the jurisdiction of the Court to the same extent as a member of the bar of this Court.

(4) Certified Students. Students certified to practice under Rule 1.14 of these Rules may practice in this District as provided in that Rule.

(c) **Association of Local Counsel.** Nothing herein shall prevent any judicial officer from ordering that local counsel be associated in any case.

(d) **Disbarment or Suspension.** An attorney who, before admission or permission to practice pro hac vice has been granted, unless specially authorized by one of the judges, or during disbarment or suspension exercises any of the privileges of a member of this bar, or who pretends to be entitled to do so, is subject to appropriate sanctions after notice and opportunity to be heard.

(e) **Sanctions for Noncompliance with Rules or Failure to Appear.**

RULE 1 - RULES OF GENERAL APPLICATION

(1) When Appropriate. After notice and a reasonable opportunity to be heard, the Court upon its own initiative may impose appropriate sanctions upon the party, attorney, supervising attorney or law firm who without just cause:

(a) violates, or fails to conform to, the Federal Rules of Civil or Criminal Procedure, the Local Rules of Practice for the District, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules and/or any order of the Court; or

(b) fails to appear at, or be prepared for, a hearing, pretrial conference or trial where proper notice has been given.

The Court may impose sanctions against a supervising attorney or law firm only if the Court finds that such supervising attorney or law firm had actual knowledge, or reason to know, of the offending behavior and failed to take corrective action.

(2) Sanctions; Generally. The Court may make such orders as are just under the circumstances of the case, and among others the following:

(a) An order imposing fines;

(b) An order imposing costs, including attorneys' fees;

(c) An order that designated matters or facts shall be taken to be established for the purposes of the action;

(d) An order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters or facts in evidence;

(e) An order striking, in whole or in part, pleadings, motions or memoranda filed in support or opposition thereto; and

(f) An order imposing sanctions as permitted by Local Rule 1.6 for violations of the applicable ethical rules, incorporated into these rules by Local Rule 1.6(d). The Court may also refer the matter to the relevant bar association(s) for appropriate action.

For violations of form, sanctions will be limited generally to fines, costs or attorneys' fees awards. Local rules governing the form of pleadings and other papers filed with the Court include, but are not limited to, the provision of Local Rule 1.9 [Forms of Papers-Civil and Criminal]. Attorneys' fees may only be assessed for a violation of a Local Rule when the Court finds that the party, attorney, supervising attorney or law firm has acted in bad faith or has willfully disobeyed Court orders or rules.

(3) Sanctions; Repeated Violations in Civil Cases. If, in a civil case, the Court finds that an attorney, party, supervising attorney or law firm has committed repeated serious violations without just cause, such finding may result in the imposition of more serious sanctions, including but not limited to, increased fines, fines plus attorneys' fees and costs, contempt, or the entry of judgment against the offending party on the entire case. Judgment against the offending party will not be entered unless the Court also finds there are no other adequate sanctions available.

(4) Scope; Enforcement. Nothing in this Rule is intended to modify, or take the place of, the Court's inherent powers, contempt powers or the sanctions provisions contained in any applicable federal rule or statute. Further, nothing in this Rule is intended to confer upon any attorney or party the right to file a motion to enforce the provisions of this

rule. The initiation of enforcement proceedings under this rule is within the sole discretion of the Court.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.6

DISBARMENT

(a) **Authority.** Any attorney admitted or otherwise authorized to practice before this Court may be disbarred, disciplined, or have the order of appointment revoked after such hearing as the Court may in each particular instance direct.

(b) **Report of Action in Any Other Jurisdiction.** Any attorney admitted or otherwise authorized to practice before this Court who is disbarred or subjected to other disciplinary action in any other jurisdiction shall promptly report the matter to this Court.

(c) **Suspension by Such Action in Any Other Jurisdiction.** Where it is known to the Court that attorney admitted or otherwise authorized to practice before this Court has been suspended or disbarred from practice by any court of competent jurisdiction, that fact will be sufficient ground for the attorney's removal or suspension by this Court, and the attorney will be forthwith suspended from practice before this Court, and, unless, upon notice mailed to the attorney at the address shown in the Clerk's records, the attorney shows good cause to the contrary within forty (40) days, the attorney will be disbarred from practice in this Court.

(d) **Arizona Rules of Professional Conduct.** The "Rules of Professional Conduct," in the Rules of the Supreme Court of the State of Arizona, shall apply to attorneys admitted or otherwise authorized to practice before the United States District Court for the District of Arizona.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.7

APPEARANCE BY ATTORNEY OR PARTY; NAME AND ADDRESS CHANGES; CONTROL OF CAUSE

(a) **Attorney of Record; Duties of Counsel.** Except as provided below, no attorney shall appear in any action or file anything in any action without first appearing as counsel of record. In any matter, even if it has gone to judgment, there must be a formal substitution or association of counsel before any attorney, who is not an attorney of record, may appear. An attorney of record shall be deemed responsible as attorney of record in all matters before and after judgment until the time for appeal or until there has been a formal withdrawal from or substitution in the case. Notwithstanding the provisions of paragraph (b) of this Rule whenever a federal, state, county or municipal law office headed by a public officer who has appeared as counsel of record, or a private or public law firm that has been retained by a party and has appeared as counsel of record while remaining counsel of record wishes to substitute or associate an attorney who is a member of, associated with, or otherwise employed by that office or firm such substitution or association may be accomplished by timely filing a notice of substitution or association with the Clerk of the Court. The notice shall state the names of the attorneys who are the subjects of the substitution or association and the current mailing address of the attorney substituting or associating. An occasional court appearance or filing of a pleading, motion or other document as associate counsel at the request of an attorney of record shall not require the filing of a notice of association.

(b) **Withdrawal and Substitution.** No attorney shall be permitted to withdraw or be substituted as attorney of record in any pending action except by formal written order of the Court, supported by written application setting forth the

reasons therefor together with the name, last known residence and last known telephone number of the client, as follows:

(1) Where such application bears the written approval of the client, it shall be accompanied by a proposed written order and may be presented to the Court *ex parte*. The withdrawing attorney shall give prompt notice of the entry of such order, together with the name, last known residence and last known telephone number of the client, to all other parties or their attorneys.

(2) Where such application does not bear the written approval of the client, it shall be made by motion and shall be served upon the client and all other parties or their attorneys. The motion shall be accompanied by a certificate of the attorney making the motion that (A) the client has been notified in writing of the status of the case including the dates and times of any court hearings or trial settings, pending compliance with any existing court orders and the possibility of sanctions, or (B) the client cannot be located or for whatever other reason cannot be notified of the pendency of the motion and the status of the case.

(3) No attorney shall be permitted to withdraw as attorney of record after an action has been set for trial, (A) unless there shall be endorsed upon the application therefore, either the signature of an attorney stating that the attorney is advised of the trial date and will be prepared for trial, or the signature of the client stating that the client is advised of the time and date and has made suitable arrangements to be prepared for trial, or (B) unless the Court is otherwise satisfied for good cause shown that the attorney should be permitted to withdraw.

(c) **Appearance by Party**. Whenever a party has appeared by an attorney, that party cannot thereafter appear or act in that party's own behalf in the cause, or take any steps therein, unless an order of substitution shall first have been

made by the Court after notice to the attorney of each such party, and to the opposite party. The attorney who has appeared of record for any party shall represent such party in the cause and shall be recognized by the Court and by all the parties to the cause as having control of the client's case, in all proper ways, and shall, as such attorney, sign all papers which are to be signed on behalf of the client, provided that the Court may in its discretion hear a party in open court, notwithstanding the fact that that party has appeared or is represented by an attorney.

(d) **Changes of Name, Affiliation, Address.** Any attorney or unrepresented party in an action pending in this District must file and serve a written notice advising if he or she has a change in name or address, or name, firm name or address if an attorney. The attorney's State Bar Attorney number must appear on such notification. The notice must be filed ten (10) days before the move becomes effective, and include all case numbers of all pending matters in which the unrepresented party or the attorney has appeared.

(e) ***Ex Parte* Presentations; Duty to Court.** All applications to a District Judge or Magistrate Judge of this Court for *ex parte* orders shall be made by an attorney of this Court or by an individual on that individual's own behalf. In the event that any *ex parte* matter or default proceeding has been presented to any District Judge, Magistrate Judge or judicial officer and the requested relief is denied for any reason, such matter shall not be presented to any other District Judge or Magistrate Judge or judicial officer without making a full disclosure of the prior presentation. Counsel should be governed by the provisions of ER 3.3 of the Rules of Professional Conduct, Rule 42, Rules of the Supreme Court of Arizona. For a failure to comply with the provisions of this Rule, the order or judgment made on such subsequent

application may be vacated at any time as a fraud upon the Court.

(f) **Criminal Cases.** No attorney, unless specially appointed by the Court, shall be considered by the Court as the attorney of record for a defendant in a criminal case until after that attorney shall have filed with the Clerk a written appearance, giving the name and address of both the attorney and the client. A copy of the written appearance shall be served upon the United States Attorney.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.8

COURT CALENDAR MANAGEMENT

(a) **Non-Trial Additions/Deletions to Calendars By Counsel or Unrepresented Parties.** Any additions or deletions to the Court calendars other than for trials shall require 48 hours notice unless otherwise directed or scheduled by the Court.

(b) **Notice of Conflict.** Upon learning of a scheduling conflict between different courts within the District of Arizona, or between the United States District Court and the Arizona State Courts, counsel has a duty to promptly notify the Judges involved in order that the conflict may be resolved. Such notice shall be in writing, with a copy provided to all counsel and conflicted courts.

(c) **Inter-Division Conflicts.** Conflicts in scheduling between divisions of this Court may be governed by local rule or general order.

(d) **Resolution of Conflicts.** Upon being advised of a scheduling conflict, the Judges involved shall, if necessary, confer personally or by telephone in an effort to resolve the conflict. While neither the United States District Court nor any Arizona Court has priority in scheduling, the following factors should be considered in resolving the conflict:

(1) The nature of the cases as civil or criminal, and the presence of any speedy trial problems;

(2) the length, urgency, or relative importance of the matters;

(3) a case which involves out-of-town witnesses, parties or counsel;

(4) the age of the cases;

(5) the matter which was set first;

(6) any priority granted by rule or statute;

(7) any other pertinent factor.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.9

FORMS OF PAPERS - CIVIL AND CRIMINAL

(a) **Title Page.** The following information shall be stated upon the first page of every document and may be presented for filing single-spaced*:

(1) The name, address, State Bar Attorney number, and telephone number of the attorney appearing for the party in the action or proceeding and whether the attorney appears for the plaintiff, defendant, or other party - in propria persona - shall be typewritten or printed in the space to the left of the center of the page and beginning at line one (1) on the first page. The space to the right of the center shall be reserved for the filing marks of the Clerk.

(2) The title of the Court shall commence on or below line six (6) of the first page.

(3) Below the title of the Court, there shall be inserted in the space to the left of the center of the paper the title of the action or proceeding. If the parties are too numerous for all to be named on the first page, the names of the parties only may be continued on the second or successive pages. All parties named in the case caption shall be separated by semicolons on any document that adds, deletes or modifies the named litigants. For all other pleadings filed in civil or criminal cases, it is sufficient to state the name of the first party on each side with an appropriate indication of the other parties, as provided by Rule 10(a), Federal Rules of Civil Procedure. All counsel/litigants are required to use proper capitalization and spacing to denote the correct spelling of the party names. In the space to the right of the center there shall be inserted (A) the number of the action or proceeding; (B) a brief description of the nature of the document, including demand for trial by jury if made in the

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* A sample form is provided in Appendix C.

document; and (C) mention of any notice of motion or affidavits or memorandum in support.

(b) **Case Numbering**. The number to be assigned to each case shall initially be placed thereon by the Clerk. Such number shall also include the designation "CR" for criminal cases and "CV" for civil cases, followed by the last two digits of the calendar year in which each case is filed; the number of the case in the order filed during each calendar year, followed by the designation of the division where filed, and ending with the initials of the Judge to whom the case is assigned. Phoenix and Prescott cases shall be numbered together, differentiated only by the designation "PHX" for Phoenix cases and "PCT" for Prescott cases. Tucson cases shall be designated "TUC" for Tucson cases.

CV-98-1-PHX-RCB	CR-98-1-PCT-EHC
CV-98-2-TUC-ACM	CR-98-2-PHX-PGR
CV-98-3-PCT-ROS	CR-98-3-TUC-JMR

(c) **Pleadings and Other Papers.**

(1) All pleadings and other papers shall be submitted on unglazed paper 8 ½ inches by 11 inches and shall be signed as provided in Rule 11 of the Federal Rules of Civil Procedure. Documents intended for filing shall be presented to the Clerk's Office without being folded or rolled and shall be kept in flat files. The body of all documents shall be typed double-spaced and shall not exceed 28 lines per page; they shall not be single-spaced except for footnotes and indented quotations. All pleadings, motions and other original papers filed with the Clerk shall be in a fixed-pitch type size no smaller than ten (10) pitch (10 letters per inch) or in a proportional font size no smaller than 13 point. The left margin shall not be less than 1 ½ inches and the right margin shall not be less than ½ inch. All documents presented for filing shall be stapled in the upper left-hand corner. Documents which are too large for stapling should be bound

with a metal prong fastener at the top, center of the document. Documents filed by incarcerated persons are exempt from the stapling and fastening requirements.

(2) In civil cases when a party requests specific relief, except for dismissal or summary judgment pursuant to Federal Rules of Civil Procedure 12(b) or 56, the party must lodge with the Clerk a separate proposed order.

(3) Proposed orders prepared for the signature of a United States District Judge or a Magistrate Judge must be prepared on a separate document containing the heading data required by subparagraphs (a)(2) and (3) above as appropriate, and must not be included as an integral part of stipulations, motions, or other pleadings. The proposed order must not contain any information identifying the party submitting the order. The following uniform signature block must be contained in the proposed order as indicated below (Magistrate Judges should be adapted accordingly):

DATED this _____ day of _____, 20____.

_____

(Judge's Name)

United States District Judge

(d) **Amended Pleadings.** Any party filing an amended pleading shall retype the entire pleading and may not incorporate any part of the preceding pleading, including the exhibits, by reference.

(e) **Attachments to Pleadings and Memoranda.**

(1) Attachments. No copy of a pleading, exhibit or minute entry which has been filed in a case shall be attached to the original of a subsequent pleading, motion or memorandum of points and authorities.

(2) Incorporation by Reference. If a party desires to call the Court's attention to anything contained in a

previous pleading, motion or minute entry, the party shall do so by incorporation by reference.

(3) Authorities Cited in Memoranda. Copies of authorities cited in memoranda shall not be attached to the original of any motion or memorandum of authorities.

(4) Attachments to Judge. Nothing herein shall be construed as prohibiting a party from attaching copies of pleadings, motions, exhibits, minute entries or texts of authorities to a copy of a motion or memorandum of points and authorities delivered to the District Judge or Magistrate Judge to whom the case has been assigned. Any such attachments or authorities provided to the District Judge or Magistrate Judge must also be provided to all other attorneys.

(5) Sanctions. In addition to any other sanctions, for violation of this Rule, the Court may order the removal of the offending document and charge the offending party or counsel such costs or fees as may be necessary to cover the Clerk's costs of filing, preservation, or storage.

(f) **Copy for Judge.** A clear, legible copy of every pleading or other document filed shall accompany each original pleading or other document filed with the Clerk for use by the District Judge or Magistrate Judge to whom the case is assigned and additional copies for each Judge in three-judge cases.

(g) **Civil Cover Sheet.**

(1) The Clerk is authorized and instructed to require a complete and executed AO form JS-44, Civil Cover Sheet, which shall accompany each civil case to be filed.

(2) Persons filing civil cases who are at the time of such filing in custody of Civil, State, or Federal institutions, and persons filing civil cases *pro se*, are exempted from the foregoing requirements.

(h) **Corporate Disclosure Statement.** The disclosure statement required by Rule 7.1 of the Federal Rules of Civil

RULE 1 - RULES OF GENERAL APPLICATION

Procedure and Rules 12(a)(1) and (2) of the Federal Rules of Criminal Procedure must be made on a form provided by the Clerk and must be supplemented if new information is obtained.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.10

MOTIONS - CIVIL AND CRIMINAL**

(a) **Motions Shall be in Writing.** All motions, unless made during a hearing or trial, shall be in writing and shall be made sufficiently in advance of trial to comply with the time periods set forth in this Rule and to avoid any delays in the trial.

(b) **Memorandum by Moving Party.** Upon any motion, the moving party shall serve and file with the motions papers a memorandum setting forth the points and authorities relied upon in support of the motion.

(c) **Responsive Memorandum.** The opposing party shall, unless otherwise ordered by the Court and except as otherwise provided by Rule 56 of the Federal Rules of Civil Procedure and paragraph (1) of this Rule, have ten (10) days after service in a civil or criminal case within which to serve and file a responsive memorandum.

(d) **Reply Memorandum.** The moving party, unless otherwise ordered by the Court, shall have five (5) days after service of the responsive memorandum to file a reply memorandum if that party so desires.

(e) **Length of Motions and Memoranda.** Unless otherwise permitted by the Court, a motion including its supporting memorandum, and the response including its supporting memorandum, each shall not exceed seventeen (17) pages, exclusive of attachments and any required statement of facts. Unless otherwise permitted by the Court, a reply including its supporting memorandum shall not exceed eleven (11) pages, exclusive of attachments.

** The time periods prescribed in the Local Rules are to be computed in accordance with Rule 6, Federal Rules of Civil Procedure.

(f) **Oral Arguments.**

(1) Dispositive Motions. For motions filed pursuant to Rule 12(b) or Rule 56 of the Federal Rules of Civil Procedure, any party desiring oral argument shall secure a time of hearing from the District Judge or Magistrate Judge assigned to the case and shall file with the motions or responses a separate notice of hearing setting forth the date, time, judge and location for the hearing. The date of the hearing shall be such as to give each party sufficient time to comply with this Rule and to allow the Court at least five (5) additional days prior to such hearing, unless otherwise directed by the Court.

(2) All Other Motions. There shall be a presumption of no oral argument on all other motions. Any party desiring oral argument shall request argument by placing "Oral Argument Requested" immediately below the title of such motion. If oral argument is granted, the Court shall cause a minute entry to be issued setting forth the date, time, judge and location for the hearing.

(g) **Telephone Argument and Conferences.** The Court may, in its discretion, order or allow oral argument on any motion or other proceeding by speaker telephone conference call, provided that all conversations of all parties are audible to each participant and the Court. Upon request of any party, such oral argument may be recorded by court reporter or other lawful method under such conditions as the Court shall deem practicable. Counsel shall schedule such calls at a time convenient to all parties and the Court. The Court may direct which party shall pay the cost of the call.

(h) **Submitted Motions.** It is presumed that motions, other than motions filed pursuant to Rule 12(b) or Rule 56 of the Federal Rules of Civil Procedure, will be considered and decided without oral argument, unless otherwise requested and permitted by the Court.

(i) **Briefs or Memoranda of Law; Effect of Non-Compliance.** If a motion does not conform in all substantial respects with the requirements of this Rule, or if the opposing party does not serve and file the required answering memoranda, or if counsel for any party fails to appear at the time and place assigned for oral argument, such non-compliance may be deemed a consent to the denial or granting of the motion and the Court may dispose of the motion summarily.

(j) **Civil Discovery Motions and All Criminal Motions.** No discovery motion filed in a civil case and no motion filed in a criminal case will be considered or decided unless a statement of moving counsel is attached thereto certifying that after personal consultation and sincere efforts to do so, counsel have been unable to satisfactorily resolve the matter. Any civil discovery or criminal motion brought before the Court without prior personal consultation with the other party and a sincere effort to resolve the matter, may result in sanctions.

(k) **Motions to Compel.** When a motion for an order compelling discovery is brought pursuant to Rule 37(a)(2) of the Federal Rules of Civil Procedure, the moving party shall set forth, separately from a memorandum of law, the following in separate, distinct, numbered paragraphs:

(1) the question propounded, the interrogatory submitted, the designation requested or the inspection requested;

(2) the answer, designation or response received; and

(3) the reason(s) why said answer, designation or response is deficient

The foregoing requirement shall not apply where there has been a complete and total failure to respond to a discovery request or set of discovery requests.

(l) **Motions for Summary Judgment.**

(1) Any party filing a motion for summary judgment shall set forth separately from the memorandum of law, and in full, the specific facts on which that party relies in support of the motion. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific portion of the record where the fact may be found (i.e., affidavit, deposition, etc.). Any party opposing a motion for summary judgment must comply with the foregoing in setting forth the specific facts, which the opposing party asserts, including those facts which establish a genuine issue of material fact precluding summary judgment in favor of the moving party. In the alternative, the movant and the party opposing the motion shall jointly file a stipulation signed by the parties setting forth a statement of the stipulated facts if the parties agree there is no genuine issue of any material fact. As to any stipulated facts, the parties so stipulating may state that their stipulations are entered into only for the purposes of the motion for summary judgment and are not intended to be otherwise binding.

(2) Notwithstanding the provisions of paragraphs (c), (d), and (f) above, the opposing party shall, unless otherwise ordered by the Court, have thirty (30) days after service within which to serve and file a responsive memorandum in opposition; the moving party, unless otherwise ordered by the Court, shall have fifteen (15) days after service of the responsive memorandum to file a reply memorandum. If oral argument is scheduled pursuant to paragraph (f) above, the time of hearing shall be set so as to give each party sufficient time to comply with these Rules and to allow the Court at least ten (10) days additional time prior to the hearing.

(m) **Motions to Dismiss for Lack of Jurisdiction.** The time schedule for response, reply, and oral argument for motions to dismiss for lack of jurisdiction shall be the same as for motions for summary judgment, as set forth in subparagraph (l)(2) above.

(n) **Motions/Requests for Extension of Time.**

(1) The time prescribed for the doing of any act may be enlarged by the Court. Such order must be made before the expiration of the time prescribed, except by motion where the failure to act was the result of excusable neglect. It shall be the duty of the party moving for an extension of time, whether by motion or stipulation, to disclose the existence of all previous extensions which have been granted concerning the matter for which an extension is sought. Immediately below the title of such motion or stipulation, there shall also be included a statement indicating whether it is the first, second, third, etc. requested extension, i.e.: "STIPULATION FOR EXTENSION OF TIME TO ANSWER (Second Request)."

(2) Except in all civil actions in which a party is an unrepresented prisoner, it is the duty of the moving party to state the position of each other party in all motions for extension of time. If the moving party's efforts to determine the position of any other party are unsuccessful, a statement to that effect must be included in the motion.

(o) **Pending Motions Notification.** Whenever any motion or other matter has been taken under advisement by a District Judge or Magistrate Judge for more than one hundred and eighty (180) days, the attorneys of record in the case shall inquire of the Court, in writing, as to the status of the matter, and shall do so every fourteen (14) days thereafter until the submitted matter has been decided.

(p) **Motions for Reconsideration.** Motions for Reconsideration. No response to a motion for reconsideration or clarification and no reply to the response shall be filed unless ordered by the Court.

(q) **Motions for Leave to Amend.**

(1) Form; Attachments. A party who moves for leave to amend a pleading must attach a copy of the proposed amended pleading as an exhibit to the motion.

(2) Lodging of Original Proposed Amendments. A party who moves for leave to amend a pleading, or who otherwise seeks to amend a pleading by leave of court including by stipulation and order, must lodge with the Clerk of Court an original of the proposed amended pleading. The original must not be physically attached or made an exhibit to a motion to amend, a stipulation to amend, or any other pleading and must contain the original signature of the attorney or unrepresented party proposing the amendment. The amended pleading is not to incorporate by reference any part of the preceding pleading, including exhibits.

(3) Effective Date of Filing Amendments; Service. The entry of the order granting leave to amend the pleading constitutes the filing date of the amended pleading and the Clerk of Court shall file the lodged pleading once the order is entered. The filing date of the amended pleading always constitutes the act from which the time for service begins to run. Unless otherwise ordered by the Court, or when the amendment adds a new party, the party who amended shall serve the amended pleading within ten (10) days of the filing date of such pleading and file a certificate of service.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.11

COMMUNICATIONS WITH TRIAL JURORS

(a) **Before or During Trial.** Absent an order of the Court and except in the course of in-court proceedings, no one shall directly or indirectly communicate with or cause another to communicate with a juror, prospective juror, or member of such juror's or prospective juror's family before or during a trial.

(b) **After Trial.** Interviews with jurors after trial by or on behalf of parties involved in the trial are prohibited except on condition that the attorney or party involved desiring such an interview file with the Court written interrogatories proposed to be submitted to the juror(s), together with an affidavit setting forth the reasons for such proposed interrogatories, within the time granted for a motion for a new trial. Approval for the interview of jurors in accordance with the interrogatories and affidavit so filed will be granted only upon the showing of good cause. See Federal Rules of Evidence, Rule 606(b). Following the interview, a second affidavit must be filed indicating the scope and results of the interviews with jurors and setting out the answers given to the interrogatories.

(c) **Juror's Rights.** Except in response to a Court order, no juror is compelled to communicate with anyone concerning any trial in which the juror has been a participant.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.12

LAND CONDEMNATION PROCEEDINGS

(a) **Separate Civil Actions.** For each tract, economic unit, or ownership for which the just compensation is required to be separately determined in a total lump sum, there shall be a separate civil action. The condemner's counsel shall make the initial determination of each tract, economic unit, or ownership for which just compensation is required to be separately determined, subject to review by the Court after filing. A single declaration of taking may incorporate one or more tracts, economic units, or ownerships.

(b) **Master File.** Where the United States files separate condemnation actions and a single declaration of taking relating to those separate actions, the Clerk will establish a Master File in which the declaration of taking will be filed, and the filing of the declaration of taking therein shall constitute a filing of the same in each of the actions to which it relates.

(c) **Incorporation by Reference.** The file in the civil action containing the first complaint filed under a single declaration of taking for multiple tracts shall be designated as the Master File for all actions based upon the declaration of taking. The single declaration of taking shall be filed in the Master File only. A separate complaint shall be filed for the action designated as the Master File. In all other actions for condemnation of property which is the subject of the declaration of taking, and appropriate reference to the Master File case number in a standard form of complaint shall be deemed to incorporate in the cause the declaration of taking by reference, and shall be a sufficient filing of the declaration of taking to which it refers.

(d) **Standard Form of Complaint.** A standard form of complaint (printed, photocopied, mimeographed, or otherwise

reproduced) may be used for each civil action filed to condemn a tract, economic unit, or ownership for which the issue of just compensation is required to be determined and which is the subject of the declaration of taking filed in a Master File.

(e) **Reference to Tract Number.** All pleadings shall contain a reference to the tract number assigned by the condemner, which is to be indicated immediately below the number of the action as prescribed by Rule 1.9 (a)(3)(A).

(f) **Assignment of Judge.** The case containing the declaration of taking and designated as the Master File shall be assigned to a District Judge in accordance with Rule 1.2(e), and all other cases which are subject to the declaration of taking will be assigned to that District Judge without resorting to further assignment by automated random selection.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.13

INVESTMENT OF FUNDS ON DEPOSIT IN THE REGISTRY ACCOUNT

(a) **Application for Order to Invest.** When funds are deposited in Registry of the Court pursuant to Rule 67, Federal Rules of Civil Procedure, with the exception of criminal cash bail, cost bonds, and civil garnishments, the party or parties will make application to the Court for an order to invest funds in accordance with the following provisions of this Rule.

(b) **Content of Order.** The order directing the Clerk to invest funds deposited in the Registry Account of the Court pursuant to 28 U.S.C. §2041 in an interest bearing account or instrument will contain the name of the bank or financial institution where the funds are to be invested, the type of account or instrument, and the terms of the investment. Funds can only be deposited in financial institutions designated in Department of the Treasury Circular 176, and that have pledged sufficient securities to secure the total sum of deposits plus interest in excess of FDIC coverage ($100,000.00 per account). The funds will be retained in the Registry Account until the financial institution has pledged the required securities and the Clerk provided with written verification.

(c) **Service of Order.** Counsel obtaining an order as described in paragraph (b) of this Rule shall cause a copy to be served personally upon the Clerk or the Chief Deputy and the Financial Deputy in the Phoenix or Tucson Divisions as appropriate.

(d) **Deposit of Funds by the Clerk.** The Clerk shall take all reasonable steps to deposit funds into interest bearing accounts or instruments within, but not more than, fifteen (15) days after having been served with a copy of the order as provided in paragraph (c) of this Rule.

(e) **Deduction of Fee.** The Clerk shall deduct from the income earned on the investment a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office.

(f) **Verification of Investment.** Any party or parties obtaining an order directing investment of funds by the Clerk will, fifteen (15) days after service of the order as provided by paragraph (c) of this Rule, verify that the funds have been invested as ordered.

(g) **Service upon Clerk\Financial Deputy.** The party or parties obtaining an order shall personally serve the Clerk or Chief Deputy and the Financial Deputy with a copy of the order.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.14

STUDENT PRACTICE RULE

(a) **Purpose.** The following Student Practice Rule is designed to encourage law schools to provide clinical instruction in litigation of varying kinds, and thereby enhance the training of lawyers in federal practice in this District.

(b) **Student Requirements.** An eligible student must:

(1) Be duly enrolled in an American Bar Association (ABA) accredited law school;

(2) Have successfully completed at least three (3) semesters of legal studies, or the equivalent;

(3) Have knowledge of the Federal Rules of Civil and Criminal Procedure, Evidence, the Code of Professional Responsibility, and the Local Rules of Practice of this Court;

(4) Be enrolled for credit in a law school clinical program at an ABA accredited law school which has been certified by the Court;

(5) Be certified by the Dean of the Law School, or the Dean's designee, as being of good character and sufficient legal ability, and as being adequately trained, in accordance with subparagraphs 1-4 above, to fulfill his or her responsibilities as a legal intern to both client and the Court; and

(6) Not accept personal compensation for legal services from a client or other source.

(c) **Program Requirements.** The program:

(1) Must be a law school clinical practice program for credit in which a law school student obtains academic and practice advocacy training, utilizing law school faculty or adjunct faculty for practice supervision, including experienced federal government attorneys or private practitioners;

(2) Must be certified by the Court;

(3) Must be conducted in such a manner as not to conflict with normal Court schedules;

(4) May accept compensation other than from a client, such as Criminal Justice Act (CJA) payments; and

(5) Must be a program which is either (A) subject to the provisions of A.R.S. §41-621 on insurance or self-insurance by the State of Arizona, or (B) has other malpractice coverage satisfactory to the Court.

(d) **Supervisor Requirements.** A supervising attorney must:

(1) Be a member of the State Bar of Arizona whose service as a supervising lawyer is approved by the dean of that law school in which the student is enrolled.

(2) Be admitted to practice in the Court in which the student is certified;

(3) Be present with the student at all times in Court, and at other proceedings in which testimony is taken, except as permitted in subparagraph (f)(4) of this Rule;

(4) Co-sign all pleadings or other documents filed with the Court;

(5) Supervise concurrently no more than ten (10) students carrying clinical practice as their entire academic program, with a proportionate increase in the number of students as their percentage of time devoted to clinical practice may be less;

(6) Assume full personal professional responsibility for student's guidance in any work undertaken and for the quality of a student's work, and be available for consultation with represented clients;

(7) Assist and counsel the student in activities mentioned in this Rule, and review such activities with the student, all to the extent required for the proper practical training of the student, and the protection of the client; and

(8) Be responsible to supplement oral or written work of the student as necessary to ensure proper representation of the client.

(e) **Certification of Student, Program, and Supervisor.**

(1) Students.

(A) Certification by the Law School Dean shall be filed with the Clerk of the Court and, unless it is sooner withdrawn, shall remain in effect until expiration of eighteen (18) months.

(B) Certification to appear generally, or in a particular case, may be withdrawn by the Court at any time, in the discretion of the Court, and without any showing of cause.

(2) Program.

(A) Certification of a program by the Court shall be filed with the Clerk of the Court and shall remain in effect indefinitely unless withdrawn by the Court.

(B) Certification of a program may be withdrawn by the Court at the end of any academic year without cause, or at any time, provided notice stating the cause for such withdrawal is furnished to the Law School Dean and supervisor.

(3) Supervisor.

(A) Certification of a supervisor must be filed with the Clerk of the Court, and shall remain in effect indefinitely unless withdrawn by the Court.

(B) Certification of a program may be withdrawn by the Court at the end of any academic year without cause, or at any time upon notice and a showing of cause.

(C) Certification of a supervisor may be withdrawn by the dean by mailing of notice to that effect to the Clerk of the Court.

(f) **Permitted Student Activities**. A certified student may, under the personal supervision of his or her supervisor:

(1) Represent any client including federal, state, or local government bodies and engage in the activities permitted hereunder only if the client on whose behalf the student is to act shall have approved in writing on a consent form available from the Clerk the performance of such acts by such certified student. In the case of criminal matters, the consent form necessary for a certified student to appear on behalf of the federal government or an agency thereof may be executed by the United States Attorney or authorized representative.

(2) Except as permitted in subparagraph (f)(4) of this Rule, a certified student may engage in the following activities on behalf of the office of the Federal Public Defender or private counsel in the defense of felonies only with the approval and under the direct and immediate supervision and in the personal presence of the supervising attorney or such attorney's designee:

(A) appearing at or taking depositions on behalf of the client, and

(B) appearing on behalf of the client in any trial, hearing, or other proceeding, before any District Judge or Magistrate Judge of the United States District Court for the District of Arizona, but only to the extent approved by such District Judge or Magistrate Judge;

(3) Engage in connection with matters of this Court, in other activities on behalf of his or her client in all ways that a licensed attorney may under the general supervision of the supervising lawyers; however, a student may make no binding commitments on behalf of a client absent prior client and supervisor approval;

(4) A certified student may engage in the following acts on behalf of a government agency as a representative of that agency without the personal appearance of the supervising attorney, but only if the supervising attorney or such

attorney's designee is available by telephone or otherwise to advise the certified student.

(A) Appear in any action on behalf of a government agency or on behalf of the office of the Federal Public Defender or private counsel in the prosecution or defense of misdemeanors, but only subject to approval by the District Judge or Magistrate Judge presiding at hearing or trial in such action and upon written consent of the client. Documents or papers filed with the Court must be signed and read, approved, and co-signed by the supervising lawyer. The Court retains the authority to establish exceptions to such activities.

(B) Appear in any proceeding in actions brought solely under 42 U.S.C. Section 405(g) and Section 1395ff to review a final decision of the Secretary of Health and Human Services;

(C) Appear in any proceeding in actions to enforce collection on promissory notes involving federally insured loans and direct federal loans in which the prayer for relief is less than $25,000.

(5) In all instances in which, under these Rules, a certified student is permitted to appear in any trial, hearing, or other proceeding before any District Judge or Magistrate Judge of the United States District Court for the District of Arizona, the certified student shall, as a condition to such appearance, cause the filing of the consent form or present the consent form for filing to the District Judge or Magistrate Judge.

(6) Certified students whose supervising attorneys are not government attorneys or attorneys acting full time on behalf of the office of the Federal Public Defender shall satisfy not only the requirements of this Rule, but also the requirements imposed by the State Bar of Arizona rules

governing the practical training of law students, as those rules may be amended from time to time.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.15

REVIEW AND APPEAL JUDGMENTS OF MAGISTRATE JUDGES

(a) **Special Master Reports (28 U.S.C. §636 (b)(2)(A)).** Any party may seek review of, or action on, a special master report filed by a Magistrate Judge in accordance with the provisions of Rule 53(e) of the Federal Rules of Civil Procedure.

(b) **Appeal from Judgments in Misdemeanor Cases (18 U.S.C. §3402).**

(1) A defendant may appeal a judgment of conviction by a Magistrate Judge in a misdemeanor case by filing a notice of appeal with the Clerk of the Court within ten (10) days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. The scope of appeal shall be the same as on an appeal from a judgment of the District Court to the Court of Appeals.

(2) The record on appeal to a District Judge shall consist of the original papers and exhibits filed with the Court and the transcript or tape recording of proceedings before the Magistrate Judge, if any.

(3) The appellant shall, within thirty (30) days of the filing of the notice of appeal, file a typewritten memorandum with the Clerk of the Court. The memorandum shall include the following: (A) A statement of the issues presented for review and a statement of the case including a statement of the nature of the case; (B) the course of proceedings; and (C) its disposition. There shall follow a statement of the facts relevant to the issues presented for review. The memorandum shall also include any argument which shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefore, with citations to the authorities and statutes relied on. The argument shall be followed by a short conclusion stating the

precise relief sought. The appellant shall serve a copy of the memorandum on the appellee.

(4) The appellee shall file an answering memorandum within twenty (20) days of the filing and service of the appellant's memorandum. The memorandum shall follow a format similar to the appellant's memorandum, except that a statement of the issues presented for review, a statement of the case, and a conclusion shall be optional.

(5) The appellant may file a reply memorandum within ten (10) days of the date of service of the appellee's memorandum.

(6) Upon the filing of the memorandum, the case will be deemed submitted for decision. Counsel may request oral argument, in writing, at the time their memoranda are filed, and the Court, in its discretion, may allow oral argument.

(7) The Court may extend the time limits set in this Rule upon a showing of good cause made by the party requesting the extension. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file a memorandum within the time provided by this Rule, or an extension thereof, the Court may dismiss the appeal.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.16

ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

(a) **Criminal Cases.** All misdemeanor cases filed by indictment or information shall be assigned to a full-time Magistrate Judge who shall proceed in accordance with 18 U.S.C. §3401 and the Rule of Procedure for the Trial of Misdemeanors Before United States Magistrate Judges. Misdemeanor cases filed by indictment or information shall be assigned to a full-time Magistrate Judge by automated random selection, with the exception of cases brought before the full-time Magistrate Judges sitting in Flagstaff and in Yuma, which shall be directly assigned. All other misdemeanors, except petty offense cases processed by the Central Violations Bureau, shall be assigned to any Magistrate Judge designated by those rules to try misdemeanors. Any Magistrate Judge may act in the absence or unavailability of the assigned Magistrate Judge. If the defendant does not waive trial, judgment, and sentencing before a District Judge of the District Court and does not consent to those proceeding before the Magistrate Judge, the case shall be promptly referred to the Clerk of Court for assignment to a District Judge and the defendant shall be directed to appear before the assigned District Judge.

(b) **Civil Cases.** Upon the order of a District Judge, a civil case shall be referred by the Clerk of the Court to a full-time Magistrate Judge by automated random selection for the conduct of such pretrial conferences as are necessary, and for the hearing and determination of all or specific pretrial procedural and discovery motions in accordance with the provisions of 28 U.S.C. §636 (b)(1). In supplementary proceedings pursuant to Rule 69, Federal Rules of Civil Procedure, including garnishments and judgment-debtor examinations, the Clerk of the Court shall refer such matters

to a full-time Magistrate Judge by automated random selection in addition to any assignment made to a District Judge.

(c) **Habeas Corpus, Other Post Conviction Petitions, and Prisoner and certain other Civil Rights Complaints.** All petitions for writs of habeas corpus, applications for post trial relief made by individuals convicted of criminal offenses, civil rights complaints by state or federal prisoners challenging conditions of their confinement, and all other civil actions to which a District Judge has been assigned shall be referred by the Clerk of the Court to a full-time Magistrate Judge according to Local Rule 3.1(b), 3.2(c) or by automated random selection. The referred Magistrate Judge shall proceed in accordance with the Rules *Governing Section 2254 Cases in the United States District* Court, or the Rules Governing Section 2255 Proceedings for the United States District Courts, as the case may be, and with 28 U.S.C. §636 (b)(1)(A) and (B).

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.17

UNITED STATES MAGISTRATE JUDGES

(a) **Duties Prescribed.** All Magistrate Judges in the District of Arizona shall perform the duties prescribed by 28 U.S.C §636 (a)(1) and (2). Unless circumstances dictate otherwise, a part-time Magistrate Judge shall, after compliance with Rule 5(b) of the Federal Rules of Criminal Procedure, set any required preliminary examination under Rule 5(c) of the Federal Rules of Criminal Procedure before a full-time Magistrate Judge located at the place where the case is to be tried.

(b) **Duty Stations.** The Magistrate Judges maintaining official stations at Grand Canyon National Park, Phoenix, Yuma, Flagstaff, Page, Holbrook/Window Rock, and Tucson, are each specifically designated pursuant to 18 U.S.C. §3401 to try persons accused of, adjudge, and sentence persons convicted of misdemeanors and any person so accused shall immediately be referred for trial or other proceedings before such Magistrate Judge. Any Magistrate Judge may accept a forfeiture of collateral or may enter judgment in a misdemeanor case based on a plea of guilty or *nolo contendere*. A Magistrate Judge trying a defendant charged with a misdemeanor shall do so in the manner prescribed by Rule 58 of the Federal Rules of Criminal Procedure.

(c) **Consent of Defendant.** Upon the transfer, under Rule 20 of the Federal Rules of Criminal Procedure, of any information or indictment charging misdemeanor, the case shall be referred immediately to a Magistrate Judge who may take a plea and impose sentence in accordance with the rules for the trial of misdemeanors, if the defendant consents in writing to this procedure.

(d) **Other Duties.** Subject to the Constitution and laws of the United States, the full-time Magistrate Judges in the District of Arizona shall perform the following duties:

(1) Serve as a Special Master in appropriate civil cases in accordance with 28 U.S.C. §636 (b) (2) and Rule 53 of the Federal Rules of Civil Procedure. Upon the consent of the parties, a Magistrate Judge may be designated by a District Judge to serve as a Special Master in any civil case notwithstanding the limitations of Rule 53(b) of the Federal Rules of Civil Procedure.

(2) Assist the District Judges in the conduct of pretrial discovery proceedings in civil or criminal actions. A Magistrate Judge may hear and determine a procedural or discovery motion or other pretrial matter in a civil or criminal case other than the motions which are specified in 28 U.S.C. §636 (b)(1)(A). As to such specified motions so assigned, a Magistrate Judge shall, upon designation by a District Judge, submit to that District Judge a report containing proposed findings of fact and recommendations for disposition by the District Judge. In any motion in which the parties are seeking the sanctions provided for in Rule 37(b)(2)(A), (B), or (C), Federal Rules of Civil Procedure, if the Magistrate Judge is inclined to grant such requests the Magistrate Judge shall be limited to filing a report and recommendation with the District Court; if the Magistrate Judge is inclined to deny any such request, he or she may enter an order thereon. A full-time Magistrate Judge may, when designated by a District Judge, conduct any necessary hearings, including evidentiary hearings, or other proceedings arising in the exercise of the authority conferred by 28 U.S.C. §636 and by these Rules.

(3) Review petitions for writs of habeas corpus, applications for post-trial relief made by individuals convicted of criminal offenses, and civil rights complaints

lodged or filed by prisoners challenging conditions of their confinement pursuant to 42 U.S.C. §1983, Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971), or otherwise, and all other civil rights claims relating to the investigation and prosecution of criminal matters or to correctional agencies and institutions in connection with their decisions or acts arising out of their custodial functions; make such orders as are necessary to obtain appropriate information which may be of assistance in determining the merits of any such writ or complaint; and submit reports and recommendations thereon to facilitate the decisions of the District Judge having jurisdiction over the case as to whether there should be a hearing. The authorization given the Magistrate Judge by this Rule shall include, but not be limited to, the entry of appropriate orders directing answers to complaints and petitions assigned to the Magistrate Judge by the Clerk of the Court or by a District Judge, and the submission to a District Judge proposed findings of fact and recommendations for the disposition of such case. A full-time Magistrate Judge is further authorized to conduct hearings preliminary to the submission of proposed findings of fact and recommendations to a District Judge.

(4) Review and submit reports and recommendations on the following types of cases which come before the Court on a developed administrative record: (A) actions to review administrative determinations under the Social Security Act and related statutes; (B) actions to review the administrative award of licenses and similar privileges; and (C) civil service cases involving such matters as adverse actions, retirement questions, and reduction in force.

(5) Review petitions and submit recommendations to the Court in civil commitment cases arising under Title III of the Narcotic Rehabilitation Act 1966.

(6) Conduct voir dire examinations and select juries in civil and criminal cases by agreement of the parties.

(7) Conduct all detention hearings and hearings to amend, modify or revoke conditions of release under the Bail Reform Act 1984, other than hearings in felony cases after a finding of guilt and prior to imposition of sentence, or after a finding of guilt and sentence of imprisonment. Notwithstanding this provision, all full-time Magistrate Judges in this district are specifically authorized to conduct detention hearings on alleged probation and supervised release violations and in all instances of alleged violation of pre-sentence release conditions, unless the assigned District Judge directs otherwise.

(8) Review and submit recommendations to the Court on all petitions for revocation of probation and conduct necessary proceedings leading to the potential revocation of probation.

(9) Conduct arraignments, accept not guilty pleas, and set time for filing of motions and responses thereto in criminal cases.

(10) With the written consent of the parties, hear and determine all motions, conduct the trial, and enter findings of fact, conclusions of law, and final judgments in civil cases when specifically referred by a District Judge.

(11) Receive the return of indictments by the Grand Jury and issue bench warrants when necessary for defendants named in the indictments.

(12) Dismiss indictments on motion of the United States Attorney and with the consent of the defendants.

(13) Enter orders for examination to determine mental competency; hold hearings and conduct examinations to determine mental competency; and enter orders determining mental competency.

(14) Conduct preliminary proceedings incident to transfer of cases pursuant to Rule 20, Federal Rules of Criminal Procedure.

(15) Issue subpoenas and writs of habeas corpus ad prosequendum and writs of habeas corpus ad testificandum or other orders necessary to obtain the presence of parties, witnesses, or evidence needed for court proceedings.

(16) Enter orders forfeiting bail where a defendant breaches his or her bail conditions by failing to appear in proceedings scheduled before the Magistrate Judge.

(17) Receive notice of the Government's intention to destroy all but samples of controlled substance seizures and any hazardous chemical substance, to enter appropriate order, and to hear and determine objections thereto unless exigent circumstances reasonably require such consideration by the Magistrate Judge on an *ex parte* basis.

(18) Issue orders upon appropriate application for disclosure of Grand Jury information pursuant to Rule 6(e)(3)(C)(i), (ii), and (iv) of the Federal Rules of Criminal Procedure.

(19) Make determinations and enter appropriate orders pursuant to 28 U.S.C. §1915 with respect to any suit, action, or proceedings in which a request is made to proceed *in forma pauperis* consistent with federal law.

(20) Conduct extradition proceedings in accordance with 18 U.S.C. §3184.

(21) Direct the probation service of the Court to conduct a presentence investigation in any misdemeanor case.

(22) Conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to trial by jury under the Constitution and laws of the United States.

(23) Make determinations and enter appropriate orders in cases assigned to them pursuant to the Speedy Trial

Act (18 U.S.C. §3161-74), unless otherwise indicated by the Act.

(24) Conduct pretrial conferences, settlement conferences, and related pretrial proceedings in civil and criminal cases.

(25) Accept waivers of indictment pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure.

(26) Accept petit jury verdicts in civil and criminal cases in the absence of a District Judge and with consent of the parties.

(27) Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure.

(28) Perform the functions specified in 18 U.S.C. §4107, §4108, §4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein.

(29) Conduct proceedings for the collection of civil penalties of not more than two hundred dollars ($200) assessment under the Federal Boat Safety Act of 1971 in accordance with 46 U.S.C. §§4311(d) and 12309(c).

(30) Issue orders authorizing the installation and use of a pen register or a trap and trace device pursuant to 18 U.S.C. §§3122-23, and related orders directing the furnishing of information, facilities and technical assistance necessary to accomplish the installation of the pen register or trap and trace device as well as orders and search warrants pursuant to 18 U.S.C. §2701 through 2710 for subscriber or customer information and for contents of electronic communications, as provided by law. This provision may apply to part-time and full-time Magistrate Judges in the District.

(31) Issue orders and search warrants authorizing civil administrative and other examinations, inspections, searches, and seizures as permitted by law. This provision

shall apply to part-time and full-time Magistrate Judges in the District.

(32) Hold hearings and issue orders or reports and recommendations as may be appropriate in connection with garnishment proceedings.

(33) Conduct felony guilty plea proceedings pursuant to Rule 11, Federal Rules of Criminal Procedure upon referral of such proceedings by a District Judge with the consent of the parties, or upon the filing of an information prior to assignment of a District Judge after waiver of indictment in open court before a Magistrate Judge in compliance with Rule 7(b), Federal Rules of Criminal Procedure, with the consent of the parties. The Magistrate Judge shall make findings with respect to the voluntariness of the plea and the defendant's understanding of other matters as required by Rule 11(b), Federal Rules of Criminal Procedure, the presence of a factual basis for the plea, and shall make a recommendation whether the guilty plea should be accepted by the District Judge.

(34) Perform the duties set forth in Chapter 176 of Title 28, United States Code, as assigned by the District Court pursuant to the Federal Debt Collection Procedures Act, 28 U.S.C. § 3008.

(35) Perform such additional duties as are not inconsistent with the Constitution and laws of the United States as may be assigned by the Court pursuant to 28 U.S.C. §636(b).

(e) **Waiver of Appearance.** A person who is charged with a suitable misdemeanor, as defined in Pub. L. 98-473, Title II, Sec. 218 (a)(1), may, in lieu of appearance, post collateral in the amount indicated by the offense, waive appearance before a Magistrate Judge specifically designated herein to try misdemeanors, and consent to forfeiture of collateral to the United States.

(f) **Amount of Collateral Set.** A Schedule of Collateral for all violations signed by this Court shall be maintained in the office of the Clerk of the Court in Phoenix and Tucson, and the office of each Magistrate Judge. The Schedule shall be available for examination by the public upon request. Schedules may be amended from time to time by order of the Court. The Magistrate Judge may increase the amount of collateral by the time specified in the violation notice or in a notice to appear or fails to appear before the Magistrate Judge when required. The collateral, after being increased, shall not exceed the maximum fine which could be imposed upon conviction and for the initial failure to post collateral or to appear shall in no event exceed twenty-five dollars ($25) more than the scheduled amount.

(g) **Violation of Release.** Nothing contained in paragraph (e), Rule 1.17, shall prohibit a law enforcement officer from arresting any person for the commission of any offense, including those for which collateral may be posted and forfeited, and, upon such arrest, taking the person immediately before a specifically designated Magistrate Judge, or requiring the person charged to make a mandatory appearance before a specifically designated Magistrate Judge. In the event a Magistrate Judge is not readily available, an arrested person may post bail in the amount set for the offense in the Schedule of Collateral or if no amount is set then five hundred dollars ($500.00), unless the person is taken without unnecessary delay before a state or local judicial officer authorized by the 18 U.S.C. 3041, who may then set bail and/or other conditions of release.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.18

AMENDMENT OF THE RULES OF PRACTICE

(a) **Rules of Practice Advisory Committee.**

(1) Appointment. The Chief Judge shall appoint members of a Rules of Practice Advisory Committee (Committee) to serve such terms as the Chief Judge designates. The Chief Judge will appoint a District Judge as the Chair of the Committee (Chair).

(2) Responsibilities. The Committee shall make reports and recommendations to the Court regarding the following matters:

(i) The consistency of the Rules of Practice (Rules) with the United States Constitution, Acts of Congress, the Federal Rules and General Orders of the Court; and

(ii) Proposed amendments to the Rules.

(b) **Procedures.**

(1) Submission of Proposals. Any person or organization may propose an amendment to the Rules. Proposals should be submitted to the Clerk of Court, marked to the attention of the Committee. Guidelines for submission of proposals are available from the Clerk of Court and are posted on the District's Internet website. For a proposal to become effective on December 1 of a given year, it must be submitted to the Clerk of Court by August 31 of the preceding year.

(2) Initial Consideration of Proposals. The Chair will convene the first meeting of the Committee in September to consider proposals. The Committee will review proposals for rejection, deferral or recommendation to the Court for consideration. The Chair will assign drafting responsibility to a Committee member of those proposals that will be forwarded to the Court. The Committee will forward the final proposed amendments to the Court by February 28. The Court will decide whether to approve the proposed amendments for circulation to the bar and the public by April 30.

(3) Comment by the Bar and the Public. Proposed amendments approved by the Court will be distributed to the State Bar of Arizona and the local chapters of the Federal Bar Association, published in a local legal publication, made available to the public at each courthouse in the District, and posted on the District's Internet website. Comments from the bar and the public shall be submitted by June 30 to the Clerk of Court, marked to the attention of the Committee. The Committee will forward the comments, an evaluation of the comments and the final proposed amendments to the Court by August 15.

(4) Final Adoption. The Court will adopt, modify or reject the final proposed amendments by September 30. An amendment is effective as to all cases filed on or after December 1 of the year in which the amendment was adopted and may apply to pending cases to the extent it is practical and fair.

(5) Alteration of Timing and Procedure. For cause, the Court may alter the timing or procedures set forth in this Rule by General Order.

(c) **Emergency Amendments.** When the Court or the Committee determines there is an immediate need to implement an amendment, including a technical, clarifying or conforming amendment, the amendment may be adopted by the Court without prior comment by the bar or the public. The effective date of an emergency amendment is the date set forth by the Court in the General Order adopting the amendment. Amendments adopted under this subsection will thereafter be circulated to the bar and the public for comment and reevaluated by the Committee and the Court for possible revision according to the deadlines set forth sections (b)(3) and (b)(4) of this Rule.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.19

ACTIONS *IN FORMA PAUPERIS*

(a) All actions sought to be filed *in forma pauperis*, pursuant to 28 U.S.C. §1915, shall be accompanied by an affidavit of inability to pay costs or give security. This affidavit shall consist of a declaration in support of request to proceed *in forma pauperis*. This declaration shall contain the following:

(1) A statement as to current employment including the amount of wages or salary per month and the name and address of the current employer.

(2) A statement, if not currently employed, as to the date of last employment and the amount of wages or salary per month which was received.

(3) A statement as to any money received within the past twelve months from any of the following sources:

(A) Business, profession, or self-employment;

(B) Rent payments, interest, or dividends;

(C) Pensions, annuities, or life insurance payments;

(D) Gifts or inheritances; and

(E) Any other source.

The statement shall include a description of each source of money and the amount of money received from each source during the past twelve months.

(4) A statement as to any cash in possession and as to any money in a financial institution, including checking, savings, and any other accounts. The statement shall include any money available to the declarant.

(5) A statement as to any real estate, stocks, bonds, notes, automobiles, investments, or other valuable property (excluding ordinary household furnishings and clothing). The statement shall describe the property and state its approximate value.

(6) A statement as to all persons who depend upon the declarant for support. The statement shall include the relationship of the dependents and the amount contributed toward their support.

(7) A statement that, because of poverty, there is an inability to pay the costs of the proceeding or given security therefore, and the declarant's belief that the declarant is entitled to relief.

(b) In actions by persons who are incarcerated, this declaration must contain a certification, executed by an authorized officer of the institution, as to any amount contained in any of declarant's accounts at the institution.

This declaration shall be executed under penalty of perjury.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.20

PROHIBITION OF BIAS

Litigation, inside and outside the courtroom, in the United States District Court for the District of Arizona, must be free from prejudice and bias in any form. Fair and equal treatment must be accorded all courtroom participants, whether judges, attorneys, witnesses, litigants, jurors, or court personnel. The duty to be respectful of others includes the responsibility to avoid comment or behavior that can reasonably be interpreted as manifesting prejudice or bias toward another on the basis of categories such as gender, race, ethnicity, religion, disability, age, or sexual orientation.

RULE 1 - RULES OF GENERAL APPLICATION

Rule 1.21

SUSPENSION OF RULES

Upon application, any District Judge or Magistrate Judge of this Court may suspend any of these Local Rules for good cause shown.

RULE 2 - CIVIL PROCEEDINGS

Rule 2.1

ORDERS AND JUDGMENTS GRANTABLE OF COURSE BY THE CLERK

(a) **Authority.** The Clerk or any deputy authorized by the Court under standing order is authorized to sign and enter any order permitted to be signed by a Clerk under the Federal Rules of Civil Procedure, and particularly the following orders, without further direction by the Court:

(1) Orders specially appointing persons to serve process under the Federal Rules of Civil Procedure.

(2) Orders on stipulation of all counsel, approved in writing by the client being represented, for the substitution of attorneys.

(3) Orders withdrawing exhibits under Rule 1.3 of these Rules.

(4) Orders in stipulation noting satisfaction of an order for the payment of money, or withdrawing stipulations, or annulling bonds, or exonerating sureties, or setting aside a default.

(5) Entering judgments or verdicts or decisions of the Court in circumstances authorized in Rule 58, Federal Rules of Civil Procedure; entering judgments by default in the circumstances authorized in Rule 55(b)(1), Federal Rules of Civil Procedure; and entering judgments pursuant to offers of judgment and acceptances thereof in the circumstances authorized in Rule 68, Federal Rules of Civil Procedure.

(6) Any other order which, under Rule 77(c) of the Federal Rules of Civil Procedure, does not require special direction by the Court.

(7) Orders authorizing the filing, without payment of fees, of prisoner civil complaints and habeas corpus petitions providing the affidavit *in forma pauperis* of the complainant or petitioner conforms to the requirements of Rule 3.1(a) or Rule 3.2(b) of these Rules as appropriate.

(b) **Suspension, Altered, or Rescinded by the Court.** Any order so entered may be suspended, altered, or rescinded by the Court for cause shown, upon such terms and within such time limits as may be established by any applicable rule or procedure.

(c) **Attachment and Garnishment.** The Clerk may issue a writ of attachment and garnishment in the circumstances and in the manner provided by the laws of the State of Arizona.

Rule 2.2

FEES FIXED BY THE CLERK

(a) **Payment and Schedule of Fees.** No act shall be performed by the Clerk for which a fee is required except on payment thereof.

(b) **Fee Deposit.** Where services are required to be performed by the Clerk for which fees cannot be definitely fixed in advance, the Clerk may require a fee deposit in such amount as in his or her opinion will be necessary to cover the anticipated expense.

Rule 2.3

STATUTORY COURT

Where, pursuant to law, an action must be heard by a District Court composed of three District Judges, the procedure to be followed by counsel in filing pleadings and submitting briefs will be as follows:

(a) **Pleadings Filed in Quadruplicate.** All pleadings are to be filed with the Clerk in quadruplicate, the original becoming part of the file and the three copies to be distributed by the Clerk to the members of the statutory Court.

(b) **Briefs Filed in Quadruplicate.** Briefs are to be submitted in quadruplicate and, unless otherwise directed by the Court, they are to be delivered to the Clerk for distribution to the members of the Court.

RULE 2 - CIVIL PROCEEDINGS

Rule 2.4

NOTIFICATION OF CLAIM OF UNCONSTITUTIONALITY

A party drawing in question the constitutionality of an act of Congress or of any state affecting the public interest shall forthwith, upon the filing of any pleading or other document which raises the question, notify in writing the District Judge or Magistrate Judge to whom the case has been assigned of the pendency of the question in any action, suit or proceeding in the district court in which the United States or a state or any agency, officer or employee thereof is not a party. If the case has not been assigned, the written notice shall be given to the Chief Judge. The purpose of the notice is to enable the Court to comply with the requirements of 28 U.S.C. §2403. The notice shall state the title of the cause, a reference to the questioned statute sufficient for its identification, and the respect(s) in which it is claimed that the statute is unconstitutional.

Rule 2.5

INTERROGATORIES AND REQUESTS FOR ADMISSIONS

(a) **Form.**

(1) The propounding party shall prepare interrogatories and requests for admission so that the responding party can provide his or her response in an adequate blank space.

(2) The responding party shall complete all copies of the set served upon him or her, attach a verification and certificate of mailing, and serve one (1) copy of the set upon each separate counsel representation in the action.

(3) All responses to interrogatories and requests for admission which are not completed in accordance with subparagraphs (1) and (2) above, shall restate the interrogatory or request for admission immediately before stating the responses.

RULE 2 - CIVIL PROCEEDINGS

Rule 2.6

DISMISSAL FOR WANT OF PROSECUTION

Cases which have had no proceedings for six (6) or more months may be dismissed by the Court for want of prosecution. Notice shall be given to the parties that such action is contemplated, and a status hearing shall be scheduled where the parties may show good cause why such action should not be taken.

RULE 2 - CIVIL PROCEEDINGS

Rule 2.7

STIPULATIONS OF COUNSEL

(a) **Generally.** No agreement between parties or attorneys is binding, if disputed, unless it is in writing signed by the attorney of record or by the unrepresented party, or made orally in open court and on the record; provided, however, that in the interests of justice the Court shall have the discretion to reject any such agreement.

(b) **Extensions of Time for Discovery.** Pursuant to the provisions of Rule 29, Federal Rules of Civil Procedure, all stipulations submitted to the Court for an order to extend time provided in Rules 33, 34 and 36, Federal Rules of Civil Procedure, for responses to discovery, shall set forth the reasons for such stipulation, including a statement as to whether or not a time for completion of discovery has been ordered by the Court.

(c) **Stipulations to Extend Time.** Any stipulation for an extension of time is subject to the requirements prescribed in Rule 1.10(n) Motions/Requests for Extension of Time, of these Rules.

RULE 2 - CIVIL PROCEEDINGS

Rule 2.8

CONDUCT OF ATTORNEYS

(a) **Prohibition of Extrajudicial Statements.** A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication, if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:

(1) evidence regarding the occurrence or transaction involved;

(2) the character, credibility, or criminal record of a party, witness or prospective witness;

(3) the performance or results of any examination or tests or the refusal or failure of a party to submit to such;

(4) his or her opinion as to the merits of the claims or defenses of a party except as required by law or administrative rules; or

(5) any other matter reasonably likely to interfere with a fair trial of the action.

(b) **Reference to Local Rule 4.13(f).** In a widely publicized or sensational case, the Court, on motion of either party or on its own motion, may issue a special order similar to that provided for by Local Rule 4.13(f).

RULE 2 - CIVIL PROCEEDINGS

Rule 2.9

NOTICE OF ORDERS

(a) **Notification of Adversary.** It shall be the duty of counsel obtaining any order in the absence of his or her adversary, except in cases of default by the adversary, to notify that adversary of the substance of the order, and, unless otherwise ordered by the Court, any order obtained where notice thereof is required shall be inoperative until such notice is given.

(b) **Waiver of Requirement.** When an order is made pursuant to a written stipulation of the parties or their attorneys or when an order is made in open court in the presence of the parties or their attorneys, if no request is made that notice of the entry of the order be mailed by the Clerk, the mailing of such notice as required by Rule 77(d), Federal Rules of Civil Procedure, shall be deemed waived by such parties.

(c) **Failure to Appear.** Where counsel are served with notice of hearing on any application for an order, the failure of such counsel to appear at the time and place named in the notice may be deemed a default in respect to that application.

(d) **Ex Parte Restraining Orders.** *Ex parte* restraining orders shall only issue in accordance with Rule 65, Federal Rules of Civil Procedure.

RULE 2 - CIVIL PROCEEDINGS

Rule 2.10

CONSENT OF PARTIES TO TRY CASES BEFORE A U.S. MAGISTRATE JUDGE

(a) **Consent to Exercise Jurisdiction by a United States Magistrate Judge.** Upon filing a complaint, the Clerk shall furnish the plaintiff a "Consent to Exercise of Jurisdiction by a United States Magistrate Judge" and sufficient additional copies of the Consent to be attached to the complaint for service by the plaintiff on each defendant.

(b) **Filing.** At such time as all parties have executed and filed a consent with the Clerk and the District Judge has determined that the case should be reassigned to a Magistrate Judge, an order of reassignment will be signed, unless the case has already been assigned to a Magistrate Judge.

(c) **Magistrate Judge Initials in Case Number.** The Clerk, by appropriate designation, will indicate on the civil docket that the matter has been reassigned to a particular Magistrate Judge. When a case has been reassigned to a Magistrate Judge, all further pleadings and other documents will bear the Magistrate Judge's initials.

(d) **Assignment of Cases by Automated Random Selection.** The parties may not consent to trial before a particular Magistrate Judge. Cases will be assigned within each division equally among the Magistrate Judges of the division by the Clerk (or by the deputy designated by the Clerk) by automated random selection and in manner so that neither the Clerk or any parties or their attorneys shall be able to make a deliberate choice for a particular case. The cases so assigned shall remain with the Magistrate Judge to whom assigned unless otherwise ordered by the Court.

RULE 2 - CIVIL PROCEEDINGS

Rule 2.11

ARBITRATION

(a) **Statement of Purpose and Scope of Authority.** Pursuant to 28 U.S.C §654-658 *et seq.*, the United States District Court for the District of Arizona has established a court-annexed, voluntary, non-binding arbitration program. The intent of this alternative dispute resolution program is to provide for the just, efficient, and economical administration of justice, preserving each party's right to trial.

An advisory committee may be constituted to assist the Chief Judge in aiding the development, implementation and continued control and support of the arbitration program.

(b) **Jurisdiction.** Pursuant to 28 U.S.C. §652, all civil cases filed after February 1, 1992, shall be referred to arbitration, if the relief sought consists only of money damages not in excess of $150,000, exclusive of interest and costs. For purposes of this Rule, the Court shall presume damages are $150,000 or less unless the parties certify that damages exceed such amount.

(1) Exclusions. Cases excluded from arbitration are those which are either:

(A) 28 U.S.C. §1343 civil rights, 28 U.S.C. §1346(a) tax refunds, 29 U.S.C. §626 ADEA, 29 U.S.C. §1132 ERISA, 42 U.S.C. §405g social security, 42 U.S.C. §2000(e)5(f) Title VII; class actions, or cases pending on a multi-district docket; or

(B) actions based on an alleged violation of a right secured by the Constitution of the United States; or

(C) cases in which a prisoner appearing *pro se* is a party; or

(D) actions seeking equitable or injunctive relief; or

(E) actions filed against six (6) or more individually named defendants; or

(F) actions assigned to the Expedited Track under the Differentiated Case Management Rule.

(2) Exemption by Court. The Court, at any time, may exempt, *sua sponte*, cases in which the objectives of arbitration would not be realized because:

(A) the case involves complex or novel legal issues;

(B) legal issues predominate over factual issues; or

(C) other good cause.

(3) Cases Not Otherwise Within Jurisdiction. Cases other than those defined in paragraph (b) may be referred to arbitration by the assigned District Judge or Magistrate Judge, *sua sponte*, and may proceed upon the consent of all parties. The District Judge or Magistrate Judge shall advise the parties of the opportunity to submit an action for arbitration by consent. If such consent is not achieved, the District Judge or Magistrate Judge to whom the action is assigned shall not be advised of the identity of any party or attorney who opposed the use of arbitration.

(4) Consent. Upon consent of and stipulation by the parties, the Court may refer any civil action to non-binding or binding arbitration.

(A) Non-binding arbitration shall be conducted in accordance with this Rule.

(B) Binding arbitration shall be conducted in accordance with the Federal Arbitration Act (9 U.S.C. §1, *et seq.*). The order of reference to binding arbitration shall specify the agreement(s) of the parties with respect to conduct of the arbitration and payment of the arbitrator.

(C) Parties who consent to non-binding or binding arbitration shall certify, personally or through their

counsel, that they have read this Rule and 28 U.S.C. §654-658 *et seq.* A party's consent to arbitration shall not be made known to any District Judge or Magistrate Judge until all parties in the action have joined in the consent.

(5) Referral to Private Alternative Dispute Resolution Procedures. In lieu of arbitration under this Rule, the parties to any civil action may elect private consensual alternative dispute resolution procedures as agreed upon in writing by and between those parties. The written stipulation for referral to private consensual alternative dispute resolution procedures shall set forth the agreement of the parties with respect to the conduct of such proceeding(s). Cases referred to private consensual alternative dispute resolution procedures which have been pending before the arbitrator for more than twelve (12) months may be dismissed without prejudice by the District Judge or Magistrate Judge for lack of prosecution following notice to all parties by the clerk that good cause must be shown why such dismissal should not be ordered.

(c) **Referral to Arbitration.** Cases determined eligible pursuant to paragraph (b) shall be referred to arbitration when the case is at issue; that is, when all defendants have either filed an answer or the time has expired within which a defendant must file an answer, as prescribed in Rule 12 of the Federal Rules of Civil Procedure. In the event additional parties have been joined in the action, the case shall not be referred to arbitration until an answer has been filed by all such parties who have been served with process and are not in default. Notwithstanding the foregoing, motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment, if the motion was filed during a time period specified by the district court, shall be heard by the assigned District Judge or Magistrate Judge prior to such referral.

(1) Default. Rule 55, Fed.R.Civ.P., and not this Rule, shall govern all proceedings regarding the default of any, or all, defendant(s).

(2) Notification. Within twenty-one (21) days after the case is at issue, the arbitration clerk shall send a Notice of Referral to all parties.

(3) Withdrawal from Arbitration. At any time during the twenty-one (21) day period following the date shown on the Notice of Referral, any party may opt-out of the arbitration program provided by this Rule by submitting to the arbitration clerk a Notice of Withdrawal from Arbitration, advising that the action is withdrawn from arbitration. The Notice of Withdrawal from Arbitration must include a certification that the party has read this Rule, and 28 U.S.C. §651 *et seq.* The notice shall be submitted under seal with both the original and a copy placed in an envelope directed to Deputy Clerk, Arbitration.

(4) Failure to Submit Timely Notice of Withdrawal from Arbitration. A party's failure to submit a timely Notice of Withdrawal from Arbitration shall constitute that party's consent to arbitrate under this Rule. A Notice of Withdrawal from Arbitration submitted to the arbitration clerk after the twenty-one (21) day opt-out period is null and void. The arbitration clerk shall refuse to accept any such untimely notice and shall return such notice to the submitting party indicating thereon that the notice was rejected as untimely. Notwithstanding the foregoing, after the expiration of the twenty-one (21) day opt-out period, a party may seek relief from a referral to arbitration under this Rule by submitting to the arbitrator a Motion for Relief from Referral to Arbitration. The arbitrator shall not grant such motion except for good cause shown.

(d) **Selection of Arbitrators.** The arbitration hearing shall be held before a single arbitrator. Unless the parties

stipulate to an arbitrator pursuant to subparagraph (d)(3) below, the arbitrator shall be chosen by the arbitration clerk randomly from among the lawyers who have been certified as arbitrators pursuant to paragraph (e), and whose case type preference matches that of the nature of suit as noted on Civil Cover Sheet (JS 44).

(1) Acceptance, Declination, or Disqualification of Arbitrator. Upon selection, the arbitration clerk shall inform the arbitrator of selection, and send a copy of all the pleadings. Within seven (7) days of receipt of the Notice of Selection, the arbitrator shall mail to the arbitration clerk either a Letter of Acceptance or a Letter of Declination or Disqualification. An arbitrator selected is subject to the disqualification rules set forth in 28 U.S.C. §455, but may decline to serve for any reason. Upon disqualification or declination, the arbitration clerk shall select a new arbitrator. Such re-selection shall not revive a peremptory strike option, if such option has been exercised pursuant to subparagraph (d)(2) following.

(2) Peremptory Strikes. The arbitration clerk shall notify all parties of the arbitrator selected and shall provide all parties with the arbitrator's biographical information. Each side shall have ten (10) days to exercise a peremptory strike. If a peremptory strike has been exercised by one side, the arbitration clerk shall select another arbitrator. The side not exercising the strike in the first instance may exercise such peremptory strike of the second arbitrator assigned. Each side is limited to one peremptory strike during the pendency of the case.

(3) Selection by Stipulation. The parties may select an arbitrator, who, upon stipulation by the parties and approval of the assigned District Judge or Magistrate Judge, may be so appointed. An arbitrator selected by stipulation need not be certified pursuant to paragraph (e) and, in such

cases, may be appointed, upon joint application of the parties, *pro hac vice* by the assigned District Judge or Magistrate Judge. An arbitrator selected by stipulation shall be subject to all provisions of this Rule (including those relating to compensation), and shall take the Arbitrator's Oath.

(4) Notice of Appointment. After expiration of the foregoing period, or upon selection of arbitrator by stipulation, the arbitrator shall be appointed and a Notice of Appointment entered, copies of which shall be mailed to the arbitrator and all parties.

(e) **Certification of Arbitrators**. The Chief Judge shall certify as many arbitrators as determined to be necessary and the Clerk of Court shall maintain a separate roster of arbitrators for each of two geographical divisions, Phoenix/Prescott and Tucson, who are so certified to hear and determine actions under this Rule.

(1) Eligibility. To be eligible for certification by the Court, an attorney:

(A) must have been admitted and qualified to practice for not less than five (5) years,

(B) must be a member in good standing of the bar of any United States District Court, and

(C) must either (i) have committed, for not less than five (5) years, 50% or more of his/her professional time to matters involving litigation, or (ii) have had substantial experience serving as a "neutral" in dispute resolution proceedings, or (iii) have had substantial experience negotiating consensual resolutions to complex problems.

(2) Experience/preference designations. Any attorney who applies for certification as an arbitrator shall specify legal area(s) of expertise or preference according to the nature of suit codes listed on Civil Cover Sheet (JS 44).

In addition, each applicant shall provide biographical information (not to exceed ten (10) typewritten lines) to be included in the notice to parties of selection of arbitrator.

(3) Exemption from other Court appointment. Those attorneys who are eligible for selection as arbitrators and whose names appear on the roster maintained by the Clerk of Court shall be exempted from the list of attorneys from which counsel are appointed to represent indigent criminal defendants pursuant to the Criminal Justice Act, 18 U.S.C. §3006(A), unless they request to remain eligible for such appointment or otherwise agree to accept such appointment.

(4) Oath. Each person shall, upon certification as an arbitrator, take the oath or affirmation prescribed in 28 U.S.C. §453 and shall complete any training which may be offered by the Court.

(5) Withdrawal. Any person whose name appears on the roster maintained in the clerk's office may ask at any time to have his or her name removed or, if selected as an arbitrator, decline to serve but remain on the roster.

(f) **Authority of Arbitrators.** Pursuant to 28 U.S.C. §655, an arbitrator to whom an action is referred shall have, for that specific action within this judicial district, the authority to:

(1) hear all motions, including dispositive motions;

(2) schedule and conduct arbitration hearings;

(3) administer oaths and affirmations;

(4) impose reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing; and

(5) make awards.

(g) **Compensation of Arbitrators.** The arbitrator shall be paid $250 for each day of the arbitration hearing, as that term is defined in subparagraph (i)(1), or $250 per case,

whichever is greater. When the arbitrator files the arbitration award, the arbitrator also should submit to the arbitration clerk a claim on the form prescribed by the Clerk of the Court for payment by the Administrative Office of the United States Courts of compensation and out-of-pocket expenses necessarily incurred in the performance of the duties under this Rule. No reimbursement shall be made for the cost of office or other space for the hearing. In the event a case settles within two (2) days of any scheduled arbitration hearing, an arbitrator may submit a claim to the arbitration clerk for compensation in the amount of $50 plus expenses reasonably incurred, and shall represent that prior to the settlement the arbitrator had been actively preparing for the arbitration hearing.

(h) **Pre-hearing Exchange of Information; Discovery; Notice of Settlement.**

(1) Arbitrator. Upon entry of the Notice appointing the arbitrator, the arbitration clerk shall send to the arbitrator a copy of all the pleadings, papers, notices, and orders (including said Notice of appointment) filed or lodged in the action. Thereafter, each party shall submit to the arbitrator all subsequent pleadings and papers, including the statement required by subparagraph (h)(2) below.

(2) Pre-Hearing Statement. No later than ten (10) days prior to the hearing date, each party shall serve on the arbitrator, and all other parties, a pre-hearing statement which sets forth for such party the following information:

(A) identification of the issues to be determined;

(B) identification of all witnesses to be called at arbitration hearing; and

(C) identification of all exhibits to be presented at the hearing.

Each party may, at the same time, serve a pre-hearing brief. Neither the pre-hearing statement nor any pre-hearing briefs shall be filed with the Court.

(3) Discovery. If pursued, discovery shall be conducted in accordance with the applicable rules of procedure and shall be completed within 120 days of Notice referring the case to arbitration.

(4) Notice of Settlement. The parties shall promptly report settlement of the action to the arbitration clerk and to the arbitrator assigned to the action and shall file an appropriate notice of settlement with the Clerk of the Court, with a copy to the arbitration clerk. A notice of settlement shall have the effect of terminating the arbitration phase of the proceeding. Thereafter, the case shall proceed in accordance with the rules of civil procedure.

(i) **Arbitration Hearing.**

(1) Scheduling. The arbitration hearing shall take place on the date and time established by the arbitrator. The arbitrator shall inform the arbitration clerk of the location, date, and time of the hearing; the arbitration clerk will prepare and send to all parties a Notice Setting Hearing. The arbitrator is authorized to change the date and time of the hearing provided the hearing is commenced within a time period specified by the district court, but in no event later than 180 days after the filing of an answer, except that the arbitration proceeding shall not, in the absence of the consent of the parties, commence until 30 days after the disposition by the district court of any motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment, if the motion was filed during a time period specified by the district court. The 180-day and 30-day periods specified in the preceding sentence may be modified by the court for good cause shown. The arbitrator shall provide the arbitration

clerk with a copy of any notice which schedules or continues the arbitration hearing. If the arbitrator is unable to commence the arbitration hearing within the time prescribed above, the arbitrator, or any party, may request that the District Judge or Magistrate Judge extend the time period. For purposes of this Rule, an "arbitration hearing" is defined to include (a) any proceeding before the arbitrator on any dispositive motion which addresses some or all of the claims at issue, and/or (b) any evidentiary proceeding on the merits of the case.

(2) Location. The hearing shall take place at a neutral location which is convenient for and agreed to by the arbitrator and the parties. If a suitable location can not be found, the arbitrator may request the arbitration clerk to make a hearing room available in a United States Courthouse facility.

(3) Failure to Appear or Participate in Good Faith at the Arbitration Hearing. An arbitration hearing may proceed in the absence of any party who, after notice, fails to appear. In the event a party fails to appear or participate in good faith at an arbitration hearing, the arbitrator shall make that determination and shall support such determination with specific written findings set forth in the arbitration award to be filed with the arbitration clerk. Failure to appear or to participate in good faith at an arbitration hearing which has been set in accordance with subparagraph (i)(1) shall constitute a waiver of the right to appeal absent a showing of good cause. If the District Judge or Magistrate Judge finds that further proceedings before the arbitrator are appropriate, the case shall be remanded to the assigned arbitrator.

Individual parties and authorized representatives of corporate or governmental parties must attend arbitration unless excused by the arbitrator for good cause shown.

(4) Each party shall have the right to cross-examine witnesses.

(5) Witnesses. Rule 45 of the Federal Rules of Civil Procedure shall apply to subpoenas for attendance of witnesses and the production of documentary evidence at the hearing before the arbitrator. Testimony at the hearing shall be under oath or affirmation.

(6) Evidence. The Federal Rules of Evidence shall be used as guides to the admissibility of evidence. Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be marked for identification and delivered to adverse parties at least ten (10) days prior to the hearing and the arbitrator shall receive such exhibits into evidence without formal proof unless counsel has been notified at least five (5) days prior to the hearing that the adverse party intends to raise an issue concerning the authenticity of the exhibit. The arbitrator may refuse to receive into evidence any exhibit, a copy or photograph of which had not been delivered prior to the hearing to the adverse party, as provided herein.

(7) *Ex Parte* Communication. There shall be no *ex parte* communication between the arbitrator and any counsel or party on any matter touching the action except for purposes of scheduling or continuing any hearing, including the arbitration hearing.

(8) Record of Proceedings. A party may have a recording and transcript made of the arbitration hearing at the party's expense. In the absence of agreement of the parties and except as related to impeachment of a witness, no transcript of the proceedings shall be admissible in evidence at any subsequent trial *de novo* of the action.

(9) Arbitrator's Report. The arbitrator is required to prepare a written record of place, time, date and

presence of parties and counsel, and certify mailing of the award to all parties.

(j) **Arbitration Award and Judgment.**

(1) Notice of Arbitration Decision; Attorneys' Fees and Related Non-Taxable Expenses; Filing of Arbitration Award. Within ten (10) days after completion of the arbitration hearing, as that term is defined in subparagraph (i)(1), the arbitrator shall file a notice of arbitration decision with the arbitration clerk, and on the same day shall mail or deliver copies thereof to all parties or their counsel. Within ten (10) days of the filing of the notice of arbitration decision, the prevailing party shall submit to the arbitrator a proposed form of arbitration award, and motion for award of attorneys' fees and related non-taxable expenses, if such fees and expenses are recoverable, together with a detailed and itemized statement of such fees and expenses. A notice of application to have costs taxed and the statement of costs, as provided by Local Rule 2.19, shall not be filed until after the entry of judgment. Within five (5) days of receipt of the proposed form of arbitration award the opposing party may submit objections to the arbitrator. Within ten (10) days of receipt of the objections, the arbitrator shall pass upon the objections, if any, and shall file the arbitration award with the arbitration clerk, and on the same day shall mail or deliver copies thereof to all parties or their counsel. The arbitration clerk shall file under seal the notice of arbitration decision and the arbitration award.

(2) Contents of Arbitration Award. The arbitration award shall be in writing, shall be signed by the arbitrator, and shall:

(A) identify the prevailing party or parties and the party or parties against whom the award is rendered;

(B) state whether the award was entered following a hearing on a dispositive motion or following an evidentiary hearing on the merits; and

(C) if awarded, state the precise monetary amount of the award, including the amount of any attorneys' fees and non-taxable expenses, and describe the nature of any other relief granted.

Except as provided in subparagraph (i)(3) above, the arbitration award need not state factual findings or legal conclusions.

(3) Limitations on Award. The amount of the award, if any, is not limited to the sum stated in this paragraph (b) if the arbitrator determines that an award in excess of that amount is just and is in keeping with the evidence and the law.

(4) Award Entered as Judgment. In accordance with 28 U.S.C. §657, the award shall be entered as the judgment of the Court after the expiration of the thirty (30) day time period for demanding a trial *de novo* has expired as hereinafter provided. The judgment so entered shall be subject to the same provisions of law, and shall have the same force and effect as a judgment of the Court in a civil action in accordance with Rule 58 of the Federal Rules of Civil Procedure, except that it shall not be the subject of appeal.

(5) Sealing of Award. The contents of any arbitration award shall not be made known to any District Judge or Magistrate Judge who might be assigned to preside at the trial of the case or to rule on potentially case dispositive motions

(A) until the Court has entered final judgment in the action or the action has been otherwise terminated, or

(B) except for purposes of preparing the report required by §903(b) of the Judicial Improvements and Access to Justice Act.

(6) Multiple Claims. In an action involving multiple claims and parties, any separable part of an arbitration award may be the subject of a trial *de novo* if the aggrieved party makes a timely demand for same pursuant to paragraph (k) below. If the aggrieved party files a timely demand pursuant to paragraph (k) below, that part of the arbitration award shall not become part of the final judgment as described in subparagraph (j)(3) above.

(k) **Trial *de novo*.** Within thirty (30) days after the arbitration award is filed with the arbitration clerk, any party may file a written demand for a trial *de novo*. A copy of such demand shall be served by the party making such demand upon all parties. Withdrawal of a demand for a trial *de novo* shall not reinstate the arbitrator's award and the case shall proceed as if it had not been arbitrated.

(1) Restoration of Case to Docket. Upon the timely filing of a demand for a trial *de novo*, the action shall be restored to the regular docket of the Court and treated for all purposes as if it had not been referred to arbitration. Any right of trial by jury which a party would otherwise have shall be preserved.

(2) Disclosure of Arbitration Matters. At the trial *de novo*, the Court shall not admit any evidence that there has been an arbitration hearing, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, unless the evidence would otherwise be admissible in the Court under the Federal Rules of Evidence or the parties have otherwise stipulated.

(3) Disclosure of Arbitration Award. To make certain that the arbitrator's award is not considered by the Court or jury either before, during or after the trial *de novo*, the arbitration clerk shall, upon the filing of the arbitration award, enter onto the docket only the date and

"arbitration award filed" and nothing more, and shall retain the arbitrator's award in a separate file in the Clerk's office. In the event demand for trial *de novo* is not timely filed, the arbitration clerk shall enter the award on the docket and place it in the case file.

(4) Deposit. Upon filing a demand for trial *de novo*, the party filing such demand, other than the United States or its agencies or officers, shall, unless permitted to proceed *in forma pauperis*, deposit with the arbitration clerk a sum equal to the total fees paid or payable to the arbitrator. The sum deposited shall be returned to the party demanding a trial *de novo* in the event that party obtains a final judgment, exclusive of interest and costs, which is more favorable than the arbitration award. In the event that the party demanding a trial *de novo* does not obtain a more favorable result, the sum deposited shall be paid to the Treasury of the United States.

(5) Any party aggrieved by the imposition of sanctions imposed by the arbitrator may obtain *de novo* review thereof by the District Judge or Magistrate Judge by filing a motion for review within 30 days of the entry of such sanctions. In the event review is sought, in whole or in part, of an arbitrator's award of monetary sanctions, then at the time the motion for review is filed the aggrieved party, other than the United States or its agencies or officers, also shall deposit with the arbitration clerk a sum equal to such monetary sanction.

(6) At any time after the filing of a demand for trial *de novo*, the parties or counsel may, with the consent of the arbitrator, confer with the arbitrator as to the strengths and weaknesses of their cases. Any fee which may be charged by the arbitrator for this conference shall be paid by the requesting party or parties. This conference must be held

with all sides represented; *ex parte* communication with the arbitrator is prohibited.

(l) **Cases Pending**. Notwithstanding the provisions of this Rule, each District Judge or Magistrate Judge may select cases from his/her docket currently in process and notify counsel of the availability of the arbitration program.

RULE 2 - CIVIL PROCEEDINGS

Rule 2.12

DIFFERENTIATED CASE MANAGEMENT

(a) **Statement of Purpose and Scope of Authority.** Pursuant to the Civil Justice Reform Act, 28 U.S.C §471 *et seq.*, the United States District Court for the District of Arizona has, effective December 1, 1993, established a Differentiated Case Management ("DCM") system, which screens cases for complexity, assigns cases to specific tracks based on that complexity, and manages cases to disposition according to predetermined milestones established for respective tracks.

(b) **Tracks.**

(1) Expedited Track.

(A) Assignment.

(i) Cases are assigned to this track by the Clerk of Court based on nature of suit, and are those which usually are resolved on the pleadings. Natures of suit include:

Bankruptcy Appeals;
Social Security;
Student Loan, Veteran's Benefits, and other recovery;
Forfeiture/Penalty actions;
Freedom of Information Act (FOIA) actions;
Office of Navajo and Hopi Indian Relocation actions;
Summons and Subpoena Enforcement actions.

(ii) Other cases may be assigned to this track based on complexity. Such determination may be made either by the parties at filing, or by the Court at a preliminary scheduling conference.

(iii) A case in a nature of suit listed in (i) above, but which may have more complex issues or facts, may likewise be assigned to another track.

(B) Management. A preliminary scheduling conference is not required; however, a scheduling order shall be issued.

(C) Discovery. Limited discovery is presumed to include interrogatories of up to fifteen (15) single-part questions, the deposition of the parties and not more than one (1) non-party fact witness deposition per party.

(2) Arbitration Track. Cases are assigned to this track by the Clerk of Court, and are managed pursuant to 28 U.S.C. §651 *et seq.* and Local Rule 2.11, which define discovery and other deadlines. Cases which are withdrawn from arbitration shall be reassigned to the appropriate track based on the criteria herein.

(3) Prisoner Pro Se Track.

(A) Assignment. Cases are assigned to this track by the Clerk of Court based on nature of suit and are administered by the District's Prisoner Pro Se Office. Natures of suit include General Habeas Corpus cases, Motions to Vacate Sentence, Mandamus Petitions, and Prisoner Civil Rights actions, which include civil rights complaints lodged or filed by prisoners challenging the conditions of their confinement pursuant to 42 U.S.C. §1983, Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971), or otherwise, and all other civil rights claims relating to the investigation and prosecution of criminal matters or to correctional agencies and institutions in connection with their decisions or acts arising out of their custodial functions.

(B) Management. Prisoner Civil Rights Actions shall be managed according to the following deadlines. The service order shall include a scheduling order, setting:

(i) maximum date to effect service, pursuant to Rule 4 of the Federal Rules of Civil Procedure, or

sixty (60) days from filing of service order, whichever is later;

(ii) discovery cutoff one-hundred fifty (150) days from the maximum service date determined according to (i) above; and

(iii) dispositive motion or proposed pretrial order filing deadline one-hundred eighty (180) days from the maximum service date determined according to (i) above.

(4) Standard Track.

(A) Assignment. Cases which do not meet the criteria of the Expedited, Arbitration, or Prisoner/Pro Se tracks, and are not determined complex, are assigned to this track.

(B) Management.

(i) A preliminary scheduling conference, pursuant to Rule 16 of the Federal Rules of Civil Procedure, shall be scheduled within one-hundred eighty (180) days of filing, and conducted by the assigned District Judge or his or her designee.

(ii) The scheduling order issued from this conference, in accordance with Rule 16(b) of the Federal Rules of Civil Procedure, shall include dates for filing a joint proposed pretrial order and conducting a pretrial conference. The trial date shall be set at the pretrial conference. If the assigned District Judge is unable to try the case on that date, the case shall be referred to the Chief Judge for reassignment to any available District Judge.

(C) Discovery. Limited discovery is presumed to include interrogatories of up to forty (40) single-part questions, the deposition of the parties and their respective experts, and not more than eight (8) non-party fact-witness depositions per party.

(5) Complex Track.

RULE 2 - CIVIL PROCEEDINGS

(A) Assignment. Complex cases are those which require extensive judicial involvement, and shall be so designated by the District Judge, counsel, and parties.

(B) Management. A preliminary scheduling conference shall be conducted before the assigned District Judge for all cases on this Complex track, and an initial scheduling order, in accordance with Rule 16(b) of the Federal Rules of Civil Procedure, shall be issued following such conference.

(C) Multidistrict litigation. An attorney filing a complaint, answer, or other pleading involving a case which may involve multidistrict litigation (see 28 U.S.C. §1407), shall, with the filing of the pleading, file in writing with the Clerk of the Court and the Judge to whom the case has been assigned, a paper describing the nature of the case listing the title(s) and number(s) of any other related case(s) filed in this or other jurisdictions.

RULE 2 - CIVIL PROCEEDINGS

Rule 2.13

CONTINUANCES AND NOTICE OF SETTLEMENT

(a) **Cases Set for Trial.** Cases that are set for trial on a day certain, but which are not reached on that day, shall retain their relative position on the calendar and shall be entitled to precedence on the next trial day over cases set for said last-mentioned day.

(b) **No Continuance.** After a case is set for pretrial or trial, it shall not be continued except as justice requires, and the Court may condition the continuance upon compliance with orders, including the payment of the expenses caused to the other parties and of jury fees incurred by the Court. A case may also be dismissed for want of prosecution if no showing is made that justice requires a continuance.

(c) **Payment of Jury Fees.** In the case of a civil jury trial where notice is not given in writing to the Clerk three (3) days before the trial is to begin that the case has been settled or otherwise disposed of, the Court may require the payment of one (1) days' jury fees by the party or parties responsible for the failure to give notice.

(d) **Duty to Inform Regarding Settlement.** When a case set for trial is settled out of Court, it shall be the duty of counsel to inform the Clerk and Court immediately.

Rule 2.14

PROCEDURE AT TRIALS

(a) **Order of Trial by a Jury.** The trial by a jury shall proceed in the following order unless the Court otherwise directs:

(1) The plaintiff or his or her counsel may make a statement of the case.

(2) The defendant or his or her counsel may make a statement of the case, or may defer making such statement until after the close of the evidence on behalf of the plaintiff.

(3) Other parties admitted to the action or their counsel may make a statement of their cases to the jury, or they may defer making such statement until after the close of the evidence on behalf of the plaintiff and defendant. The statement of such parties shall be in the order directed by the Court.

(4) The plaintiff shall then introduce evidence.

(5) The defendant shall introduce evidence.

(6) The other parties, if any, shall then introduce evidence in the order directed by the Court.

(7) The parties may then introduce rebutting evidence on each side in the respective order above set forth in this Rule.

(b) **Opening Statement.** The opening statement to the jury shall be confined to a concise and brief statement of the facts which the parties propose to establish by evidence on the trial. Any party may decline to make such statement.

(c) **Prohibition Against Reading Pleadings.** Unless the Court permits, no party may read his or her pleadings to the jury.

(d) **Order of Arguments.** The right to open and close the argument shall belong to the party who has the burden of proof

as to the issues in the action. Where each of the parties has the burden of proof on one or more issues, the Court, in its discretion, shall determine the order of arguments. All arguments shall be subject to such time limitations as may be imposed by the Court.

(e) **Limit on Examination/Cross-Examination.** Only one (1) on each side may, unless the Court otherwise permits, examine or cross-examine a witness, argue a point, or make an argument to the jury.

RULE 2 - CIVIL PROCEEDINGS

Rule 2.15

TRIAL JURIES

The jury in all civil cases shall be impanelled [*sic*] in accordance with Rules 47 and 48 of the Federal Rules of Civil Procedure. Each side shall exercise its peremptory challenges simultaneously and in secret. The Court shall then designate as the jury the persons whose names appear first on the list.

RULE 2 - CIVIL PROCEEDINGS

Rule 2.16

JURY INSTRUCTIONS

(a) **Proposed Jury Instructions.** Proposed instructions for the jury shall be presented to the Court at the opening of the trial unless otherwise directed by the Court; but the Court, in its discretion, may at any time prior to the opening of the argument, receive additional requests for instructions on matters arising during the trial. The requested instructions shall be properly entitled in the cause, distinctly state by which party presented, and shall be prepared in accordance with local rule 1.9(c). They shall be numbered consecutively and contain not more than one (1) instruction per page. Each requested instruction shall be understandable, brief, impartial, free from argument, and shall embrace but one (1) subject, and the principle therein stated shall not be repeated in subsequent requests.

(b) **Failure to Conform.** A willful failure to conform to these requirements in the manner of proposing instructions will, in the discretion of the Court, be deemed sufficient ground for their refusal.

(c) **Citations of Authorities.** All instructions requested of the Court shall be accompanied by citations of authorities supporting the proposition of law stated in such instructions.

(d) **Copies Served on Other Parties.** At the time of presenting the instructions to the Court, a copy shall be served upon the other parties.

(e) **Objections.** Objections to an instruction for the jury, or a refusal to give as a part of such jury instructions requested in writing, shall be made out of the hearing of the jury and shall be noted by the Clerk in the minutes of the trial or by the reporter if one is in attendance.

Rule 2.17

FINDINGS

In all actions in which findings are required, the prevailing party shall, unless the Court otherwise directs, prepare a draft of the findings and conclusions of law within five (5) days after the rendition of the decision of the Court if the decision was in the presence of counsel, and otherwise within five (5) days after notice of the decision. The draft of the findings and conclusions of law shall be filed with the Clerk and served upon the adverse party. The adverse party shall within five (5) days thereafter file with the Clerk, and serve upon his or her adversary, such proposed objections, amendments, or additions to the findings as he may desire. The findings shall thereafter be deemed submitted and shall be settled by the Court and shall then be signed and filed. No judgments shall be entered in actions in which findings of fact and conclusions of law are required until the findings and conclusions have been settled and filed. A failure to file proposed findings of fact and conclusions of law and to take the necessary steps to procure the settlement thereof may be grounds for dismissal of the action for want of prosecution or for granting judgment against either party.

RULE 2 - CIVIL PROCEEDINGS

Rule 2.18

JUDGMENTS

(a) **Entry of Judgment.** Judgments will be entered in accordance with Rule 58, Federal Rules of Civil Procedure. If the judgment is one which requires settling by the District Judge or Magistrate Judge, and if such judgment is approved as to form by opposing counsel, the judgments may thereupon be signed by the District Judge or Magistrate Judge. If the adversary does not approve the form, the matter shall proceed to final settlement as if it were a finding as specified in the preceding Rule. Any default judgment which requires the signature of the Court shall be submitted by the person obtaining the judgment.

(b) **Interest on Award of Money.** When a judgment provides for an award of money, the form of judgment prepared must provide a space wherein the rate of interest can be entered by the Court on the date of entry at the rate then authorized pursuant to 28 U.S.C. §1961 (1). If a rate of interest other than provided for by 28 U.S.C. §1961 (a) is required by contractual agreement, other statutory requirement, or by stipulation of the parties, the amount will be affirmatively stated in the judgment.

Rule 2.19

COSTS: SECURITY FOR, TAXATION, PAYMENT

(a) **Procedure for Filing Bill of Costs.** Costs shall be taxed as provided in Rule 54(d), Federal Rules of Civil Procedure. A party entitled to costs shall, within ten (10) days after the entry of final judgment, unless time is extended under Rule 6(b), Federal Rules of Civil Procedure, file with the Clerk of Court and serve upon all parties, a bill of costs on a form provided by the Clerk, together with a notice of application to have the costs taxed. The notice of application to have the costs taxed shall contain a date for taxation (normally three (3) weeks after the date of filing the bill of costs), which shall be secured from the Clerk. This bill of costs shall include a memorandum of the costs and necessary disbursements, so itemized that the nature of each can be readily understood, and, where available, documentation of requested costs in all categories must be attached. The bill of costs shall be verified by a person acquainted therewith.

(b) **Objections, Appearance Not Required.** Within ten (10) days after service of the bill of costs, a party objecting to any cost item may file with the Clerk and serve itemized objections in writing, presenting any affidavits or other evidence he or she has in connection with the costs and the grounds for the objection. On the date set for the taxation neither the parties nor their attorneys shall appear, and not later than ten (10) days thereafter, the Clerk shall proceed to tax the costs and shall allow such items as are properly allowable. In exceptional cases a party may request, by written motion, that a taxation hearing with parties present be held before the Clerk. The Clerk, on his or her own motion, may also order the parties to appear for a taxation hearing. In the absence of objection, any item listed may be taxed in the discretion of the Clerk. The Clerk

shall thereupon docket and include the costs in the judgment. Notice of the Clerk's taxation shall be given by mailing a copy of the taxation order to all parties in accordance with Rule 5, Federal Rules of Civil Procedure. The taxation of costs thus made shall be final unless modified on review by the Court on motion served within five (5) days thereafter, pursuant to Rule 54(d), Federal Rules of Civil Procedure.

(c) **Security.** In every action in which the plaintiff was not a resident of the District of Arizona at the time suit was brought, or, having been so, afterwards removed from this District, an order for security for costs may be entered upon application therefor within a reasonable time upon notice. In default of the entry of such security at the time fixed by the Court, judgment of dismissal shall be entered on motion.

(d) **Prevailing Party Entitlement to Costs.** The party entitled to costs shall be the prevailing party. Generally, a party in whose favor judgment is rendered is the prevailing party. The prevailing party need not succeed on every issue to be entitled to costs. Upon entry of judgment on a motion for summary judgment, the party requesting the summary judgment is the prevailing party. The Court will not determine the party entitled to costs in actions terminated by settlement; parties must reach agreement on taxation of costs, or bear own costs.

(e) **Taxable items.**

(1) Clerk's Fees and Service Fees. Clerk's fees (see 28 U.S.C. §1920), and service fees are allowable by statute.

(2) Fees Incident to Transcripts - Trial Transcripts. The cost of the originals of transcripts of trials or matters prior or subsequent to trial, is taxable at the rate authorized by the judicial conference when either requested by the Court, or prepared pursuant to stipulation. Mere acceptance by the Court of a copy does not constitute a

request. Copies of transcripts for counsel's own use are not taxable in the absence of a special order of the Court.

(3) Deposition Costs. The reporter's charge for the original deposition and copy is taxable whether or not the same be actually received into evidence, or whether or not it is taken solely for discovery. The cost of obtaining a copy of a deposition by parties in the case other than the one taking the deposition is also taxable. The reasonable expenses of the deposition reporter and a notary presiding at the taking of the depositions are taxable, including travel and subsistence. Counsel's fees, expenses in arranging for and attending the taking of a deposition are not taxable. Fees for the witness at the taking of a deposition are taxable at the same rate as for attendance at trial. The witness need not be under subpoena. A reasonable fee for a necessary interpreter at the taking of a deposition is taxable.

(4) Witness Fees, Mileage and Subsistence. The rate for witness fees, mileage and subsistence are fixed by statute (see 28 U.S.C. §1821). Such fees are taxable even though the witness does not take the stand, provided the witness is in attendance at the Court. Such fees are taxable even though the witness attends voluntarily upon request and is not under subpoena. Taxable transportation expenses shall be based on the most direct route at the most economical rate and means reasonably available to the witness. Witness fees and subsistence are taxable only for the reasonable period during which the witness is within the district. No party shall receive witness fees for testifying in his or her own behalf, but this shall not apply where a party is subpoenaed to attend Court by the opposing party. Witness fees for officers of a corporation are taxable if the officers are not defendants and recovery is not sought against the officers individually. Fees for expert witnesses are not taxable in a greater amount than that statutorily allowable for ordinary

witnesses. Allowance fees for a witness being deposed shall not depend on whether or not the deposition is admitted into evidence.

(5) Exemplification and Copies of Papers. The reasonable cost of copies of papers necessarily obtained from third-party records custodians is taxable. The reasonable cost of documentary exhibits admitted into evidence at hearing or trial is also taxable, including the provision of additional copies for the Court and opposing parties. The cost of copies submitted in lieu of originals because of the convenience of offering counsel or his or her client are not taxable. All other copy costs are not taxable except by prior order of the Court.

(6) Maps, Charts, Models, Photographs, Summaries, Computations and Statistical Summaries. The cost of maps and charts are taxable if they are admitted into evidence. The cost of photographs, 8" X 10" in size or less, are taxable if admitted into evidence, or attached to documents required to be filed and served on opposing counsel. Enlargements greater than 8" X 10" are not taxable except by prior order of the Court. The cost of models is not taxable except by prior order of the Court. The cost of compiling maps, summaries, computations, and statistical comparisons is not taxable.

(7) Interpreter Fees. The reasonable fee of a competent interpreter is taxable if the fee of the witness involved is taxable. The reasonable fee of a competent translator is taxable if the document translated is necessarily filed, or admitted into evidence, or is otherwise taxable.

(8) Docket Fees. Docket fees and costs of briefs are taxable pursuant to 28 U.S.C. §1923. Docket fees may be awarded only when the United States is the prevailing party.

(9) Removed Cases. Fees paid to the Clerk of the State Court prior to removal are taxable in this Court.

(10) Other items may be taxed with prior Court approval.

RULE 2 - CIVIL PROCEEDINGS

Rule 2.20

ATTORNEYS' FEES AND RELATED NON-TAXABLE EXPENSES

(a) **Scope.** This Rule applies to claims for attorneys' fees and related non-taxable expenses made in cases assigned to the Standard Track or Complex Track of the local rule governing Differentiated Case Management. If a final judgment, including a judgment made under Rule 54(b), Federal Rules of Civil Procedure, does not determine the propriety and the amount of attorneys' fees authorized by statute or by contract, or if the court does not establish other procedures for determining such fees, the procedures set forth in this Rule shall apply. This Rule does not apply to claims for attorneys' fees and related non-taxable expenses which may be recoverable as an element of damages or to claims for attorneys' fees and related expenses for violations of the Federal Rules of Civil Procedure or under 28 U.S.C. § 1927. The provisions of this Rule also do not apply to any motion which may be filed after the entry of a default judgment or by court-appointed counsel in a habeas corpus matter.***

(b) **Time for Filing.** Where recovery of attorneys' fees and related non-taxable expenses are sought against the United States, the motion and supporting memorandum of points and authorities must be filed in accordance with the time limits set forth in Rule 54(d)(2)(B), Federal Rules of Civil Procedure and 28 U.S.C. § 2412(d)(1)(B). In all other cases, this paragraph (b) shall apply.

(1) Motion. Unless otherwise provided by statute or court order entered in an individual case, the party seeking an award of attorneys' fees and related non-taxable expenses shall file and serve a motion for award of attorneys'

*** Although civil in nature, writs of habeas corpus are generally applicable to prior criminal proceedings.

fees and related non-taxable expenses within fourteen (14) days of the entry of judgment in the action with respect to which the services were rendered. At a minimum, the motion shall specify:

(A) The applicable judgment and the statutory or contractual authority entitling the party to the award; and

(B) The amount of attorneys' fees and related non-taxable expenses sought or a fair estimate of such amount.

At the time of filing the motion, counsel need not file a memorandum of points and authorities, as required by Local Rule 1.10(b), or the supporting documentation, as required by paragraph (d) of this Rule.

(2) Memorandum in Support. Unless otherwise ordered by the Court, the memorandum of points and authorities in support of a motion for award of attorneys' fees, and all supporting documentation as required by paragraph (d) of this Rule, shall be filed and served within sixty (60) days of the entry of judgment in the action with respect to which the services were rendered.

(3) Responsive and Reply Memoranda. Unless otherwise ordered by the court, the opposing party may file and serve a responsive memorandum to the motion for award of attorneys' fees and related non-taxable expenses, or any portion thereof, within fifteen (15) days after service of the memorandum in support. Thereafter, the moving party, unless otherwise ordered by the court, shall have ten (10) days after service of the responsive memorandum to file a reply memorandum if that party so desires.

(4) Computation of Time. The time periods prescribed in this Rule are to be computed in accordance with Rule 6, Federal Rules of Civil Procedure.

(c) **Content of Memorandum in Support of Motion for Award of Attorneys' Fees and Related Non-Taxable Expenses.** The memorandum of points and authorities in support of a motion

for award of attorneys' fees and related non-taxable expenses shall include a discussion of the following matters with appropriate headings and in the order listed below:

(1) Eligibility. This section must specify the judgment and cite the applicable statutory or contractual authority upon which the movant seeks an award of attorneys' fees and related non-taxable expenses. This section also must set forth a description of the nature of the case and must identify the claims or defenses as to which the party prevailed and the claims or defenses as to which the party did not prevail. Counsel should cite the relevant legal authority governing the standard by which the court should determine eligibility.

(2) Entitlement. This section must discuss the applicable factors deemed relevant in determining whether attorneys' fees and related non-taxable expenses should be allowed, with citation(s) to the relevant legal authority. If the moving party claims entitlement to fees for preparing the motion and memorandum for award of attorneys' fees and related non-taxable expenses, such party also must cite the applicable legal authority supporting such specific request.

(3) Reasonableness of Requested Award. This section should discuss, as appropriate, the various factors bearing on the reasonableness of the requested attorneys' fee award, including, but not limited to, the following:

(A) The time and labor required of counsel;

(B) The novelty and difficulty of the questions presented;

(C) The skill requisite to perform the legal service properly;

(D) The preclusion of other employment by counsel because of the acceptance of the action;

(E) The customary fee charged in matters of the type involved;

(F) Whether the fee contracted between the attorney and the client is fixed or contingent;

(G) Any time limitations imposed by the client or the circumstances;

(H) The amount of money, or the value of the rights, involved, and the results obtained;

(I) The experience, reputation and ability of counsel;

(J) The "undesirability" of the case;

(K) The nature and length of the professional relationship between the attorney and the client;

(L) Awards in similar actions; and

(M) Any other matters deemed appropriate under the circumstances.

(d) **Supporting Documentation**. Unless otherwise ordered, the following documentation shall be attached to each memorandum of points and authorities filed in support of a motion for award of attorneys' fees and related non-taxable expenses:

(1) A Statement of Consultation. No motion for award of attorneys' fees will be considered unless a separate statement of the moving counsel is attached to the supporting memorandum certifying that, after personal consultation and good faith efforts to do so, the parties have been unable to satisfactorily resolve all disputed issues relating to attorneys' fees or that the moving counsel has made a good faith effort, but has been unable, to arrange such conference. The statement of consultation shall set forth the date of the consultation, the names of the participating attorneys and the specific results or shall describe the efforts made to arrange such conference and explain the reasons why such conference did not occur.

(2) Fee Agreement. A complete copy of any written fee agreement, or a full recitation of any oral fee agreement,

must be attached to the supporting memorandum. If no fee agreement exists, then counsel must attach a statement to that effect.

(3) Task-Based Itemized Statement of Fees and Expenses. A task-based itemized statement of time expended and expenses incurred shall be prepared in accordance with paragraph (e) of this Rule and shall be attached to the supporting memorandum. Counsel may seek leave of court to file such statement under seal if deemed necessary to prevent the disclosure of information protected by the attorney-client privilege and attorney work-product doctrine.

(4) Affidavit. The supporting memorandum must be accompanied by an affidavit of moving counsel which, at a minimum, sets forth the following:

(A) Background. A brief description of the relevant qualifications, experience and case-related contributions of each attorney for whom fees are claimed.

(B) Reasonableness of Rate. A brief discussion of the terms of the written or oral fee agreement, if any. This section shall include a statement as to whether the client has paid any fees or expenses pursuant to any such fee agreement and, if so, a statement of the amount paid and a description of the nature of the services for which payment was made, the time involved in such services and the identity of the person performing such services. As appropriate, this section also should discuss the method by which the customary charges were established, the comparable prevailing community rate or other indicia of value of the services rendered for each attorney for whom fees are claimed.

(C) Reasonableness of Time Spent and Expenses Incurred. In this section the affiant must state that the affiant has reviewed and has approved the time and charges set forth in the task-based itemized statement and that the time spent and expenses incurred were reasonable and necessary

under the circumstances. This section also must demonstrate that the affiant exercised "billing judgment." The affiant should identify all adjustments, if any, which may have been made, and specifically, should state whether the affiant has eliminated unnecessary, duplicative and excessive time, deleted certain categories of time or expense entries and/or reduced the amount charged for a particular type of expense such as facsimile or photocopy charges.

(5) Any other affidavits or evidentiary matter deemed appropriate under the circumstances or required by law.

(e) **Task-Based Itemized Statement of Attorneys' Fees and Related Non-Taxable Expenses.** Unless otherwise ordered, the itemized account of the time expended and expenses incurred shall be in the format described in this Rule.

(1) Format. The itemized statement for legal services rendered shall reflect, in chronological order, the following information:

(A) The date on which the service was performed;

(B) The time devoted to each individual unrelated task performed on such day;

(C) A description of the service provided; and

(D) The identity of the attorney, paralegal or other person performing such service.

(2) Description of Services Rendered. The party seeking an award of fees must adequately describe the services rendered so that the reasonableness of the charge can be evaluated. In describing such services, however, counsel should be sensitive to matters giving rise to issues associated with the attorney-client privilege and attorney work-product doctrine, but must nevertheless furnish an adequate nonprivileged description of the services in question. If the time descriptions are incomplete, or if such descriptions fail to adequately describe the service rendered,

the court may reduce the award accordingly. Explanatory examples are set forth below.

(A) Telephone Conferences. This time entry must identify all participants and the reason for the telephone call.

> Ex.: Telephone conference with J. Doe (attorney for Defendant Baker) re response to settlement proposal and further negotiations.

(B) Legal Research. This time entry must identify the specific legal issue researched and, if appropriate, should identify the pleading or document the preparation of which occasioned the conduct of the research. Time entries simply stating "research" or "legal research" are inadequate and the court may reduce the award accordingly.

> Ex.: Work on motion for summary judgment including (1) legal research re statute of limitations applicable to Title VII cases and (2) factual investigation pertaining to claimed discrimination.

(C) Preparation of Pleadings and Other Papers. This time entry must identify the pleading, paper or other document prepared and the activities associated with its preparation.

> Ex.: Prepare first amended complaint including factual investigation underlying newly asserted Lanham Act claim and legal research related to elements of such claim.

(D) Travel Time. Ordinarily air travel time should not be charged. If services were performed during such

time, then describe such services rather than charging for the travel time.

(3) Description of Expenses Incurred. In a separate portion of the itemized statement, identify each related non-taxable expense with particularity. Counsel should attach copies of applicable invoices, receipts and/or disbursement instruments. Failure to itemize and verify costs may result in their disallowance by the court.

(f) **Responsive Memorandum.** The responsive memorandum of points and authorities in opposition to a motion for award of attorneys' fees and related non-taxable expenses shall identify with specificity all disputed issues of material fact and shall separately identify each and every disputed time entry or expense item. The respondent may attach controverting affidavits.

(g) **Discovery.** Discovery shall not be conducted in connection with a motion for award of attorneys' fees and related non-taxable expenses, unless ordered by the court upon motion and good cause shown.

(h) **Evidentiary Hearing.** The court in its discretion or upon motion may set an evidentiary hearing on a motion for award of attorneys' fees and related non-taxable expenses to resolve serious disputes involving material issues of fact that compromise the award. In all other cases, the court will determine the appropriate award, if any, of attorneys' fees and related non-taxable expenses without an evidentiary hearing.

(i) **Class Action Settlements.** Notice of the amount of any attorneys' fees and related non-taxable costs, or fair estimate thereof, to be sought in connection with any action certified as a class action pursuant to Rule 23, Federal Rules of Civil Procedure shall be given to all class members at the time, and in accordance with, the notice provided to the class

members given pursuant to Rule 23(e), Federal Rules of Civil Procedure.

(j) **Establishment of Fee Committee, Appointment of Special Master - Class Actions.** This section addresses attorneys' fees to be awarded under the equitable or common fund doctrine, and in any action certified as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

(1) In such cases, the court may appoint a Fee Committee, with such powers as the Court prescribes, to make recommendations on fees and expenses for all attorneys submitting an application for attorneys' fees. Members of the Fee Committee shall be paid for their services and expenses incurred out of the fund from which the attorneys' fees are to be paid, on such basis as may be ordered by the court.

(2) Alternatively, the court may, in its discretion, appoint a special master for this purpose, under and pursuant to the provisions of Rule 53 of the Federal Rules of Civil Procedure.

(3) The Fee Committee or Master may be appointed following:

(A) The court's preliminary approval of a proposed class settlement in accordance with Rule 23(e) of the Federal Rules of Civil Procedure; or

(B) The entry of a final judgment, or a judgment made final by Rule 54(b) of the Federal Rules of Civil Procedure; or

(C) The entry of an appealable order which gives rise to an entitlement to attorneys' fees.

(4) The membership of a Fee Committee appointed by the court shall consist of three persons, at least two of whom shall be attorneys. All attorneys appointed as members of a Fee Committee shall be members of the bar of this court. A committee member may not have either an interest in the

outcome of the proceeding or have represented any party in the litigation.

(5) The Fee Committee or Master shall have authority to contact any attorney whose fee application is under consideration and may conduct hearings as the Fee Committee or Master may deem necessary.

(6) Every application for attorneys' fees in cases governed by this paragraph (j) shall include, at a minimum, the information required by paragraphs (c), (d) and (e) of this Rule and, in addition thereto, shall include the following:

(A) A narrative statement of the general contributions made by the applicant's firm to the prosecution of the litigation;

(B) An identification of any committees, task forces or other organizational groups formed in connection with the litigation upon which the applicant served, and a description of the role played by the applicant in the work of that committee or group; and

(C) Such supplemental information or data as shall be required by any Fee Committee or Master appointed by the court to review such application.

(7) At the conclusion of its work, the Fee Committee or Master shall submit a written report and recommendation to the court, setting forth, *inter alia*, the following:

(A) A description of the procedures employed by the Fee Committee or Master;

(B) A description of the standards adopted for reviewing applications for attorneys' fees, and for calculating recommended awards;

(C) A description of the pertinent factors involved in the litigation which were considered by the Fee

Committee or Master in reviewing applications and arriving at recommendations to the court; and

(D) Specific recommendations as to the amount of fees to be awarded to each application.

(8) Unless otherwise ordered by the court, the recommendations of the Fee Committee or Master shall be recited in the notice provided to the class members advising of the court's preliminary approval of any proposed settlement, the date scheduled for any hearing on the award of attorneys' fees, costs and expenses, and the right of the class membership to participate in any such hearing.

(9) Following the hearing, the court shall enter its order adopting, modifying or rejecting, in whole or in part, the recommendation of the Fee Committee or the Master.

RULE 2 - CIVIL PROCEEDINGS

Rule 2.21

SURETY BONDS AND UNDERTAKINGS

(a) **Surety in Form Provided by State's Rules.** Whenever by statute or rule of this Court surety is required to be given for any purpose by any party, such surety shall be in the form and manner provided for similar surety in the state courts under the statutes and rules of Arizona.

(b) **Restrictions on Persons Accepted as Sureties.** No Clerk, Marshal, member of the bar, or other officer of the Court, will be accepted as surety on any bond or undertaking in any action or proceeding in this Court.

(c) **Acceptance of Cash, Bonds, or Notes.** The Clerk may accept cash or, to the extent and in the manner permitted by 6 U.S.C. §15, United States bonds or notes.

(d) **Clerk's Authority to Approve.** The Clerk is authorized to approve any surety required for any purposes unless the statute expressly requires the approval of the Court therefor.

RULE 2 - CIVIL PROCEEDINGS

Rule 2.22

EXECUTIONS

All executions issued by the Clerk of this Court shall, unless otherwise specially ordered, be returnable sixty (60) days from the date of such writ.

RULE 2 - CIVIL PROCEEDINGS

Rule 2.23

REMOVAL TO FEDERAL COURT

A defendant or defendants desiring to remove any civil action or criminal prosecution from a state court shall file with the Clerk of Court a Notice of Removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. The notice will also contain an affirmative statement that a copy of the notice has been filed with the State Court Clerk. The party seeking the removal shall file with the district court all pleadings filed by all parties with the state court prior to the notice of removal. In addition, to the civil cover sheet, AO Form JS-44, the removing party shall submit a "Supplemental Civil Cover Sheet for Cases Removed from Another Jurisdiction," to accompany each Notice of Removal.

RULE 3 - PRISONER PROCEEDINGS

Rule 3.1

COMPLAINTS BY PRISONERS

(a) **Filing Requirements.** All complaints and applications to proceed in forma pauperis by prisoners shall be signed and legibly written or typewritten on forms approved by the Court and in accordance with the instructions provided with the forms unless the assigned District Judge or Magistrate Judge, in his or her discretion, finds that the complaint or application is understandable and that it conforms with federal and local requirements for prisoner actions. Copies of the forms and instructions shall be provided by the Clerk upon request. The assigned District Judge or Magistrate Judge may strike or dismiss complaints or applications which do not conform substantively or procedurally with federal and local requirements for prisoner actions.

(b) **Assignment of Judicial Officer.** Once a complaint by a prisoner is assigned to a District Judge or Magistrate Judge, any future pleadings lodged or filed by the prisoner shall be assigned to the same District Judge or Magistrate Judge to whom the earlier case was assigned, unless otherwise ordered by the Court.

RULE 3 - PRISONER PROCEEDINGS

Rule 3.2

WRITS OF HABEAS CORPUS AND MOTIONS PURSUANT TO 28 U.S.C. § 2255

(a) **Filing Requirements.** Petitions for writs of habeas corpus pursuant to 28 U.S.C. § 2254 and 28 U.S.C. § 2241, motions to vacate sentence pursuant to 28 U.S.C. § 2255, and applications to proceed in forma pauperis shall be signed and legibly written or typewritten on forms approved by the Court and in accordance with the instructions provided with the forms unless the assigned District Judge or Magistrate Judge, in his or her discretion, finds that the petition or motion is understandable and that it conforms with federal and local requirements for such actions. Copies of the forms and instructions shall be provided by the Clerk upon request. The original and two (2) copies of the petition or motion shall be sent or delivered to the Clerk. The assigned District Judge or Magistrate Judge may strike or dismiss petitions, motions or applications which do not conform substantively or procedurally with federal and local requirements for such actions.

(b) **In Forma Pauperis Certification.** If a habeas corpus petitioner desires to prosecute the petition *in forma pauperis*, the petitioner shall file an application to proceed in forma pauperis on a form approved by the Court, accompanied by a certification of the warden or other appropriate officer of the institution in which the petitioner is confined as to the amount of money or securities on deposit to the petitioner's credit. If the petitioner has in excess of twenty-five dollars ($25) on deposit, leave to proceed in forma pauperis will be denied and the petitioner must pay the filing fee.

(c) **Assignment of Judicial Officer.** Once a petition for a writ of habeas corpus is assigned to a District Judge or Magistrate Judge, any future pleadings lodged or filed by the

prisoner shall be assigned to the same District Judge or Magistrate Judge to whom the earlier case was assigned, unless otherwise ordered by the Court. Motions pursuant to 28 U.S.C. §2255 will be assigned as provided for in Rule 4(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

RULE 4 - CRIMINAL PROCEEDINGS

Rule 4.1

[Abrogated effective December 1, 2003]

RULE 4 - CRIMINAL PROCEEDINGS

Rule 4.2

ARREST ON INDICTMENT, ORDER OF COURSE

On the filing of an indictment found by the Grand Jury against a person not in custody or on bail, an order shall be entered for an arrest warrant, a bench warrant, or summons to be issued under the seal of the Court.

RULE 4 - CRIMINAL PROCEEDINGS

Rule 4.3

COPIES OF INDICTMENTS AND INFORMATIONS

At the time of the preparation of each indictment or information, the United States Attorney shall prepare sufficient copies and deliver them to the Clerk with the original so that a copy may be delivered to each defendant as required by Rule 10 of the Federal Rules of Criminal Procedure.

Rule 4.4

TRUE NAME TO BE GIVEN

When the defendant is arraigned, the defendant shall be informed that if the name by which he or she is charged is not his or her true name, the defendant must then declare his or her true name or be proceeded against by the name in the charge. If the defendant alleges that another name is his or her true name, the Court shall direct its entry in the minutes of the arraignment and the subsequent proceedings on the charge may be had against the defendant by that name, referring also to the name by which the defendant was charged.

RULE 4 - CRIMINAL PROCEEDINGS

Rule 4.5

PRETRIAL SERVICES

Pursuant to the Pretrial Services Act of 1982 (18 U.S.C. §3152-3155), the Court establishes an independent Pretrial Services Office for the District of Arizona.

Upon notification that a defendant has been arrested, pretrial service officers will conduct a prerelease interview as soon as practicable. The judicial officer setting bail or reviewing a bail determination shall receive and consider all reports submitted by pretrial service officers.

A copy of the pretrial service report shall be provided to the attorneys for the accused and the Government, and shall be used only for the purpose of fixing conditions of release, including bail determinations. When a copy is provided, the pretrial service office will advise the attorneys by cover letter or form that (a) the report is not to be copied, (b) the report is not a public record, and (c) that the content may not be disclosed to unauthorized individuals. Otherwise, the reports shall remain confidential, as provided in 18 U.S.C. §3153, subject to the expectations provided therein.

Pretrial service officers shall supervise persons released on bail at the discretion of the judicial officer granting the release or modifications of the release.

Rule 4.6

BAIL

(a) **Bonds Taken by Magistrate Judges.** Unless otherwise ordered by the Court, all bonds in criminal cases for appearance before this Court shall be taken by Magistrate Judges and must be immediately forwarded to the Clerk's office by the Magistrate Judge taking such bond and must have endorsed thereon his or her approval.

(b) **Justification of Sureties.** In all cases in which individuals are sureties they must justify before the officer taking the bond, and their justification must be endorsed thereon.

(c) **Continuing Bonds.** All bonds must be continuing bonds, obligating the defendant to appear before the Court for judgment and sentence upon conviction.

(d) **Release on Bond.** Each defendant applying for release upon his or her own recognizance or for such other release as provided for by the terms of the Bail Reform Act of 1984 (18 U.S.C. §3141 et seq.) shall support his or her request as provided in 18 U.S.C. §3142 (f). When a release is obtained under the terms of the Bail Reform Act of 1984, such release shall be effective only upon the execution of an order and in accordance with its terms and upon forms supplied by the Clerk and signed by the defendant and the Magistrate Judge or the Judge granting the release.

(e) **Release on Bond Pending Appeal.** When a defendant is released on bond pending appeal, the defendant will be ordered to report to the Pretrial Services Office, and, unless otherwise directed, shall comply with such reasonable rules and regulations as the Pretrial Officer shall prescribe during pendency of the appeal subject to modification by the Court for cause shown.

RULE 4 - CRIMINAL PROCEEDINGS

Rule 4.7

CASH BOND AND FORFEITURE OF BOND

(a) **Exoneration of Bail.** If the defendant has given bail, he or she may at any time before the forfeiture of the recognizance, in like manner, deposit the sum mentioned in such recognizance, in compliance with Rule 46(d), Federal Rules of Criminal Procedure, and, upon the deposit of that sum, the bail shall be exonerated.

(b) **Application to Fine and Costs.** When money, government notes, or bonds have been deposited by the defendant, then, if it remains on deposit at the time of a judgment for the payment of a fine or fine and costs, the Clerk shall, under the direction of the Court, apply the money, notes, or bonds in satisfaction thereof, and, after satisfying the fine and costs, shall refund the surplus, if any, to the defendant.

(c) **Forfeiture of Bonds.** Forfeitures of bonds shall be declared by this Court in conformity with Rule 46(f), Federal Rules of Criminal Procedure. If, at any time after such forfeiture is declared by this Court, the defendant appears and satisfactorily excuses his or her neglect, the Court may direct the forfeiture to be discharged where justice so requires.

RULE 4 - CRIMINAL PROCEEDINGS

Rule 4.8

PROBATION - PRESENTENCE INVESTIGATIONS

(a) **Probation.** In criminal cases where the defendants are placed on probation, such defendants shall be subject to the supervision of the Probation Office of the Court, unless otherwise ordered, and shall comply with such reasonable rules and regulations as the Probation Officer shall prescribe, subject to modifications by the Court for cause shown.

(b) **Presentence Investigation.** Upon conviction by trial or plea, a defendant shall not leave the District of Arizona until he or she has been interviewed by a Probation Officer, unless otherwise ordered by the Court.

(c) **Appeals.** In all cases where a defendant has been sentenced to a period of probation, and files a notice of appeal, the period of probation and supervision shall begin on the date of judgment, notwithstanding the pendency of the appeal.

(d) **Petition for Disclosure of Presentence or Probation Records.**

(1) No confidential records of this Court maintained by the Probation Office, including presentence and probation supervision records, shall be sought by any applicant except by written petition to this Court establishing with particularity the need for specific information in the records.

(2) When a demand for disclosure of presentence and probation records is made, by way of subpoena or other judicial process, to a Probation Officer of the Court, the Probation Officer may file a petition seeking instruction from the Court with respect to responding to the subpoena.

(3) Whenever a Probation Officer is subpoenaed for such records, he or she shall petition this Court in writing for authority to release documentary records or produce testimony with respect to such confidential Court information.

In either event, no disclosures shall be made except upon an order issued by this Court.

(e) **Preparation and Use of Presentence Reports.**

(1) Plea agreements, whether a public record or sealed by order of the Court, shall be made available to the Probation Office for the District of Arizona, for the limited use of the Probation Officer preparing the presentence report and exercising probation supervision.

(2) The initial disclosure of the presentence report to counsel and pro se defendant under Rule 32(e) of the Federal Rules of Criminal Procedure must not include the Probation Officer's recommendation on the sentence. The subsequent submission of the presentence report to the Court and the parties under Rule 32(g) of the Federal Rules of Criminal Procedure must include the Probation Officer's recommendation on the sentence, unless the Court directs the Probation Officer not to disclose the recommendation.

(3) When a copy of a presentence report is released, the probation Office will advise the defendant's counsel and the U.S. Attorney by cover letter or form letter that (A) the report is not to be copied, (B) the report is not a public record, and (C) that the content may not be disclosed to unauthorized individuals. A receipt or charge-out system will be utilized by the Probation Office to monitor distribution and location of the reports.

(4) If the presentence report contains any information or material that contains diagnostic opinions which might seriously disrupt a program of rehabilitation; source of information obtained upon a promise of confidentiality; or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other person; that information will be included in an addendum or attachment and not distributed to the defendant's counsel or the U.S. Attorney, and handled as provided in Rule

32(c)(3)(A) and 32(b)(5) of the Federal Rules of Criminal Procedure.

(5) The Probation Office, after sentencing, will retain the original copy of the presentence report on behalf of the Clerk of the Court. When a request is made to the Clerk's Office to view a copy of the presentence report, the request shall be referred to the Probation Office, which shall take care of the matter. If appropriate, the Probation Office shall prepare for the requestor of a copy of the presentence report exclusive of Rule 32(b)(5), Fed.R.Crim.P., information and/or other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other person, if latter information is not specifically relied upon by the Court in sentencing.

(6) The Probation Office will send to the U.S. Sentencing Commission a complete final draft presentence report, sentencing guideline worksheets, plea agreement (if written), judgment and commitment order, and the Court's written reasons for imposing sentence.

(7) Nothing in this Rule shall prohibit the Probation Office from disclosing the presentence report to an Arizona Superior Court Probation Office if that office agrees in writing, on a form approved by the Chief Judge of this Court, to maintain confidentiality of matters so specified by this Court.

(f) **Release of Presentence Report to Parole Commission.** Any copy of defendant's presentence report which the Court releases to the United States parole Commission, pursuant to 18 U.S.C. §4205 (e), shall state thereon that:

(1) the presentence report is a confidential Court document;

(2) that the Court intends the report to remain confidential even though released to the Commission; and

(3) that the presentence report is merely loaned to the Commission in order for the Commission to serve its statutory functions and must be returned to the Court thereafter.

RULE 4 - CRIMINAL PROCEEDINGS

Rule 4.9

NOTICE OF ARREST

(a) **Notice of Arrest of Probation and Parolee Violators.** As soon as practicable after taking into custody any person charged with a violation of probation or parole, the Marshal shall give written notice to the Clerk of the Court and the Probation Officer of the date and fact of such arrest, and the place of confinement of such alleged violator, and shall mail two (2) copies of such notice to the United States Attorney, who shall in turn mail a copy to any attorney who may appear of record for such alleged violator.

(b) **Notice of Arrest by Federal Agencies and Others.** It shall be the duty of the Marshal to require all federal agencies and others who arrest any person as a federal prisoner in this district and all jailers who incarcerate any such person in any jail or place of confinement in this district, to give the Marshal notice of such arrest or incarceration forthwith.

As soon as practicable after receiving notice or other knowledge of any such arrest or incarceration anywhere within the district, the Marshal shall notify Pretrial Services and shall give written notice to the Clerk of the Court and to the United States Attorney of the date and fact of such arrest and the place of confinement of such federal prisoner.

RULE 4 - CRIMINAL PROCEEDINGS

Rule 4.10

CRIMINAL JURIES

In criminal cases, peremptory challenges by the government and the defense shall be exercised simultaneously unless otherwise directed by the Court. In all other respects the procedures for the selection of trial jurors shall be as set forth in Rule 24, Federal Rules of Criminal Procedure.

RULE 4 - CRIMINAL PROCEEDINGS

Rule 4.11

CONFESSIONS AND ADMISSIONS

(a) **Written Notice of Statements to be Used.** Unless otherwise ordered, the United States Attorney, at least fifteen (15) days prior to trial, shall give written notice to the Defendant through his or her attorney of any and all written or oral confessions, admissions, or statements of the Defendant which the government intends to use during the course of the trial.

(b) **Objections to Above.** Not less than ten (10) days prior to the trial date, Defendant's attorney shall, unless otherwise ordered, file with the Clerk and notify the United States Attorney of the objections, if any, which Defendant may have to such confessions, admissions, or statements. Upon request of the Defendant's attorney and within two (2) days after receipt of any objections, the Clerk shall fix a time and place for hearing such objections and determining the admissibility of the alleged confessions, admissions, or statements.

RULE 4 - CRIMINAL PROCEEDINGS

Rule 4.12

INCOMPETENCY DEFENSE

Mental incompetency shall not be a defense in any criminal proceeding unless the accused or his or her attorney in such proceedings, at the time the accused enters his or her plea of not guilty or within fifteen (15) days thereafter or at such later time as the Court may for good cause permit, files with the Court and serves upon the United States Attorney written notice of his or her intention to rely on such defense.

RULE 4 - CRIMINAL PROCEEDINGS

Rule 4.13

FREE PRESS - FAIR TRIAL DIRECTIVES

These guidelines are proposed as a means of balancing the public's right to be informed with the accused's right to a fair trial before an impartial jury. While it is the right of a free press to report what occurs in a public proceeding, it is also the responsibility of the bench to take appropriate measures to insure that the deliberations of the jury are based upon what is presented to it in Court. It is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication in connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(a) **Prior to Arrest.** With respect to a Grand Jury (consistent with the provisions of Rule 6, Federal Rules of Criminal Procedure) or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by any means of public communication that goes beyond the public record or that is not necessarily to inform the public that the investigation is under way, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(b) **From Time of Arrest.** From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall

not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by any means of public communication relating to that matter and concerning:

(1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may in their discretion make a factual statement of the accused's name, age, residence, occupation, and family status, and, if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his or her apprehension or to warn the public or any dangers he or she may present;

(2) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(3) The performance of any examinations or tests, or the accused's refusal or failure to submit to an examination or test;

(4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim, if the announcement is not otherwise prohibited by law;

(5) The possibility of a plea of guilty to the offense charged or a lesser offense; or

(6) Any option as to the accused's guilt or innocence, or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of any official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency,

and the length of the investigation; from making an announcement at the time of the seizure of any physical evidence other than a confession, admission, or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him or her.

(c) **During the Trial.** During the jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or law firm may quote or refer without comment to public records of the Court in the case.

(d) **Other Information.** Nothing in this Rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies or to preclude any lawyer from replying to charges of misconduct that are publicly made against him or her.

(e) **Disclosure by Others.** All Court personnel, including, among others, Marshals, Deputy Marshals, Court Clerks, Bailiffs, Court Reporters, and employees or

subcontractors retained by a Court-appointed official reporter, are prohibited from disclosing to any person without authorization by the Court, information relating to a pending Grand Jury or criminal case that is not part of the public records of the Court. The divulgence of information concerning arguments and hearings held in chambers or otherwise outside the presence of the public is also forbidden.

(f) **Duty of Court in Special Cases.** In a widely publicized or sensational criminal case, the Court on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such order. Such a special order might be addressed to some or all of the following subjects:

(1) A proscription of extrajudicial statements by participants in the trial (including lawyers, parties, witnesses, jurors, and court officials) which might divulge prejudicial matters not of public record in the case.

(2) Specific directives regarding the clearing of entrances to and hallways in the courthouse and respecting the management of the jury and witnesses during the course of the trial, to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers, and others, both in entering and leaving the courtroom or courthouse and during recesses in the trial.

(3) A specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and from

communicating with others in any matter during their deliberations.

(4) Sequestration of the jury on motion of either party or by the Court, without disclosure of the identity of the movant.

(5) Direction that the names and addresses of jurors or prospective jurors not be publicly released except as required by statute, and that no photograph be taken or sketch made of any juror within the environs of the Court.

(6) Insulation of witnesses during the trial.

(7) Specific provisions regarding the seating of spectators and representatives of news media, including:

(A) an order that no member of the public or news media representative be at any time permitted within the bar railing;

(B) the allocation of seats to news media representatives in cases where there are an excess of requests, taking into account any pooling arrangement that may have been agreed to among the news reporters.

The Court may also consider making more extensive use of techniques to insure an impartial jury, to include use of change of venue, sequestration of jurors, sequestration of witnesses, individual voir dire of prospective jurors, cautionary instructions to the jury, the sealing of pretrial motion papers and pleadings, and the holding of sidebar conferences between the Judge and the attorneys during trial in order to rule upon legal and evidentiary issues without being overheard by the jury.

(g) **Closure of Pretrial Proceedings.** Unless otherwise provided by law, all preliminary criminal proceedings, including preliminary examinations and hearings on pretrial motions, shall be held in open court and shall be available for attendance and observation by the public; provided that, upon motion made or agreed to by the defense, the Court, in

the exercise of its discretion, may order a pretrial proceeding be closed to the public in whole or in part on the grounds:

(1) that there is a reasonable likelihood that the dissemination of information disclosed at such proceeding would impair the Defendant's right to a fair trial; and

(2) that reasonable alternatives to closure will not adequately protect defendant's right to a fair trial.

If the Court so orders, it shall state for the record its specific findings concerning the need for closure.

(h) **No Direct Restraints on Media.** No rule of Court or judicial order should be promulgated by a United States District Court which would prohibit representatives of the news media from broadcasting or publishing any information in their possession relating to a criminal case.

RULE 4 - CRIMINAL PROCEEDINGS

Rule 4.14

COMPLEX CRIMINAL CASES

In any complex criminal case, each counsel shall, within ten (10) days after a plea of not guilty has been entered, notify the Clerk and the Judge to whom the case has been assigned of the nature of the case.

RULE 4 - CRIMINAL PROCEEDINGS

Rule 4.15

DISMISSAL FOR WANT OF PROSECUTION

Cases which have had no proceedings for six (6) or more months may be dismissed by the Court for want of prosecution. Notice shall be given to the parties that such action is contemplated, and a status hearing shall be scheduled where the parties may show good cause why such action should not be taken.

RULE 4 - CRIMINAL PROCEEDINGS

Rule 4.16

EXCLUDABLE TIME AND MOTIONS - SPEEDY TRIAL ACT

(a) **Content of Motions.** Any motion submitted for filing in a criminal case must contain a statement as follows:

> "Excludable delay under 18 U.S.C. s 3161(h)____ will occur as a result of this motion or of an order based thereon." (In the blank space provided, the counsel will insert the specific subparagraph involved, e.g., (1)(A), competency examination of defendant; (3)(A), absence or unavailability of defendant or essential witness.)

(b) **Content of Orders.** Any written order prepared for signature by a United States District Judge or United States Magistrate Judge must contain a final paragraph or statement as follows:

> "Excludable delay under 18 U.S.C. s 3161(h)____ is found to commence on ___ for a total of __ days."

(c) **Content of Minute Entries.** All minute orders relating to disposition of criminal motions ruled upon in open court shall contain a statement comparable to that outlined in (b) above.

(d) **Waiver of Statement.** In any case, or in the case of a defendant proceeding pro per, the Court may, in the interest of justice, waive the necessity of a statement of excludable time.

(e) **Motions for Joinder of Motions.** Any motion for joinder must specifically identify the motions to be joined, and motions for joinder of motions to be filed in the future will not be considered.

RULE 4 - CRIMINAL PROCEEDINGS

Rule 4.17

JURY INSTRUCTIONS

The provisions and requirements of Rule 2.16 of these Rules are applicable to and will be followed in all criminal jury trials except that 2.16(e) objections must follow Rule 30, Fed.R.Crim.P.

APPENDIX A. RULE 1.10 TIME CHART

CATEGORY ONE: ALL MOTIONS (except Motions for Summary Judgment and Motions to Dismiss for Lack of Jurisdiction)

Authority: Rule 6 of the Federal Rules of Civil Procedure and Rule 1.10 of these Local Rules

Type of Motion	Response Time (to previous action)	Mailing Time	Notice Time
Motion and Memorandum by Moving Party	(Initiating Action)	3 days	30 days from filing of the Motion, then the following Monday
Responsive Memorandum	10 days	3 days	
Reply Memorandum	5 days	3 days	
Court Review Time	5 days		

CATEGORY TWO: MOTIONS FOR SUMMARY JUDGMENT and MOTIONS TO DISMISS FOR LACK OF JURISDICTION

Authority: Rule 6 of the Federal Rules of Civil Procedure and Rule 1.10 of these Local Rules

Type of Motion	Response Time (to previous action)	Mailing Time	Notice Time
Motion, Memorandum, and Statement of Facts	(Initiating Action)	3 days	65 days from filing of the Motion, then the following Monday
Responsive Memorandum	30 days	3 days	
Reply Memorandum	15 days	3 days	
Court Review Time	10 days		

APPENDIX B. - U.S. DISTRICT COURT LEGAL HOLIDAYS

New Year's Day	January 1*
Martin Luther King Day	Third Monday in January
Washington's Birthday	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4*
Labor Day	1st Monday in September
Columbus Day	2nd Monday in October
Veteran's Day	November 11*
Thanksgiving Day	4th Thursday in November
Christmas Day	December 25*

*In accordance with 5 U.S.C. § 6103, whenever a holiday occurs on Sunday, the following Monday is treated as a holiday and whenever a holiday occurs on Saturday, the Friday immediately before is treated as the legal holiday.

APPENDIX C. - RULE 1.9 FORM*

(Attorney's Name)†
(Attorney's Address)
State Bar No. 012345
(Attorney's Telephone Number)
Attorney for Plaintiffs Doe

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

John Doe and Jane Doe, husband and wife, Plaintiff, vs. ABC Corporation, a Delaware corporation, Defendant.	)	No. CV-03-1-PHX-ROS FIRST AMENDED COMPLAINT

DATED this _____ day of _____, 20___,

_____
(Attorney's Name)
Attorney for Plaintiffs Doe‡

*This form is intended for illustrative purposes only.
†A proposed order must not contain any information identifying the party submitting the order.
‡ The name and title of the Judge assigned to the matter should be adapted accordingly when submitting a proposed order.